

“We the people of the United States, in order to form a more perfect Union, *To* provide for the common defense, promote the general welfare...do ordain and establish this Constitution for the United States of America.”

—preamble to the U.S. Constitution

*A series of lectures and discussions
celebrating the Bicentennial of the
United States Constitution.*

edited by Clarke A. Chambers
and Esther Wattenberg

TO PROMOTE THE GENERAL WELFARE

edited by Clarke A. Chambers
and Esther Wattenberg

A series of lectures and discussions celebrating the bicentennial of the United States Constitution. Sponsored by the University of Minnesota's School of Social Work, Social Welfare History Archives, and Center for Urban and Regional Affairs, and held at the Hubert H. Humphrey Center, University of Minnesota, during October and November 1987.

A publication of the Center for Urban
and Regional Affairs, 301 19th Avenue
S., University of Minnesota, Minneapolis,
Minnesota 55455.

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1988

Publication No. CURA 88-7

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PROLOGUE

In the fall of 1987, on the Twin Cities campus of the University of Minnesota, a series of lectures examining political and constitutional implications of public welfare policies over two hundred years of American experience was sponsored jointly by the School of Social Work and the Social Welfare History Archives. Four scholars were invited to explore themes relevant to the promotion of the general welfare: movements for welfare reform as they related to poverty and economic dependency; public policy and mental illness; the welfare of women, children, and families; and changing definitions of public responsibility for the welfare of persons unable, for whatever reasons, to care for themselves. This publication includes essays written by three of the major presenters: Michael Katz, professor of history, University of Pennsylvania; Gerald Grob, professor of history and research fellow of the Institute of Health, Health Care Policy and Aging Research, Rutgers University; and Lela Costin, professor emeritus of social work, University of Illinois, Urbana-Champaign. The fourth oral presentation by Mary Frances Berry, Geraldine R. Segal professor of American social thought, University of Pennsylvania, provided a stimulating and provocative discourse on current programs and policies seen in historical perspective, but we have no copy in written form for publication.

For each oral presentation there were two responses--one by H.E. Mason, professor, Department of Philosophy, University of Minnesota, one of whose fields of speciality is social ethics, and a second by a practitioner or policy-maker: Josie Johnson, consultant in education, and civic leader; Roger Toogood, director, Children's Home Society of Minnesota; Allison Ashley, assistant commissioner, Mental Health Programs, for the state of Minnesota's Department of Human Services; and Lee Greenfield, Minnesota state legislator and chair of

the legislature's Committee on Health and Human Services. Professor Mason has provided a written response to the whole series for this publication.

* * * *

The United States Constitution of 1787, as several of the participants observed, was, of course, silent on the issue of welfare policy as commonly perceived today. The call in the preamble "to promote the general welfare" was essentially an exhortation of parallel significance to the declared intent to establish justice, insure domestic tranquility, provide for the common defense, and secure the blessings of liberty. These constituted a declaration of goals that all republics must seek to honor. To underline these obligations, and to make them functional, the authors of the Constitution listed as a primary responsibility of Congress, under Article I Section 8, the power to "lay and collect taxes...to pay the debts and provide for the common defense and the general welfare of the United States."

That grant of authority proved ambiguous--and potent--enough in time to legitimize a vast expansion of power on the part of national government in the twentieth century to regulate the economy and to inaugurate a patchwork system combining means-tested public assistance programs and social insurance systems. At the time of ratification, the founders clung to the model of the Elizabethan Poor Law (which had provided the structure for family assistance throughout the entire colonial era), by the terms of which responsibility to care for those in need rested first with family and second with local government. Thus it was that throughout the thirteen British North American colonies effective concern for the aged, for widows and orphans, and for the mentally or physically incapacitated was expressed by units of local government--variously parish, town, and county. In light of that long historical experience, we can see clearly the intent of the Tenth

Amendment to the Constitution which "reserved to the States respectively, or to the people" all implicit powers of governance not expressly delegated to Congress. The Constitution of 1787, then, created a federal system in which that great undefined reservoir of governmental authority, known as the "police power," would find implementation chiefly in state and local government. That inherent power was conceived to comprehend the authority to provide for the security, health, and well-being of all the citizens. Economic and social conditions came in the twentieth century to require that the national government assume, in its own right, the power to act on issues affecting health, education, welfare, and during the New Deal years the courts came finally to recognize the legal validity and social necessity of accepting the claim of the federal government to primacy in initiating and financing all manner of welfare programs, although administrative authority continued, in many cases, to be shared with agencies of county and state governments.

The particulars of these developments varied greatly--by state or region, by substance of need, by shape of policy, by populations at risk (the aged, the unemployed, dependent children, the mentally ill)--but over the generations, however reluctantly and prudently, a public responsibility to assist citizens in need constituted a central theme in American political life.

Although the rhetoric of laissez-faire, so strong in the nineteenth century, has led many persons to assume that in the United States the ideal was always minimal activity by government, in practical fact governments (local, state, and national) always played assertive roles of primary significance in advancing the general welfare. Colonial society had no compunctions about providing public assistance to needy persons--widows and widowers, orphans and half-orphans, neglected children, and the elderly. In the nineteenth century, local and state governments created institutions designed

to meet human needs and to maintain social order--poorhouses; insane asylums; houses of refuge; reform schools; orphanages; and homes for the mentally retarded, the physically handicapped, and dependent aged persons. In the twentieth century came an elaborate extension of welfare programs and policies--workmen's compensation, old age and survivors insurance, unemployment compensation, aid to families of dependent children, housing, public works, Medicare and Medicaid, and like measures. On the other hand, the United States remains the only modernized society without some form of family allowances or comprehensive health care.

Powerful also over many generations were the efforts of agencies in the private, voluntary, or independent sectors to address issues of human welfare. Benevolent societies, mutual aid societies, charities, settlements, children's aid societies, and child guidance clinics provided evidence of the proliferation of thousands of citizens' groups that sought to alleviate or prevent human suffering and to promote the spread of social norms. Such efforts find expression today in the multiple programs that fall within the aegis of the United Way. Although in popular perception governmental policies and programs in the voluntary sector seemed to be separate and have competing initiatives, they have, in fact, been mingled in a "mixed economy." The public and private jurisdictions are frequently confused. Even in the nineteenth century government funds were often assigned to voluntary, nonprofit agencies for the accomplishment of public goals.

These and related themes are the focus of the essays here published.

* * * *

The lecture series was conceived, developed and chaired by Clarke Chambers, professor, Department of History, and Esther Wattenberg, professor, School of

Social Work and Center for Urban and Regional Affairs. The series and this publication were made possible by generous grants from the Minnesota Humanities Commission, and the Office of the Provost and Vice President for Academic Affairs, the Biester-Young Lectureship Fund of the School of Home Economics, and the Center for Urban and Regional Affairs. In-kind support was provided by the School of Social Work, the Department of History, and the Humphrey Institute of Public Affairs. Administrative implementation came from the University's Department of Professional Development and Conference Services, week-to-week management through the efficient and gracious work of Lori Graven. The enterprise benefited from the practical advice of Gleason Glover, president, Minneapolis Urban League; Joan Higginbotham, president, State League of Women Voters; and Barbara Kaufman, executive director, Minnesota Association of Voluntary Social Service Agencies.

For all such support, in cash and in kind, in volunteered counsel and advice we are grateful.

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HISTORIC OBSTACLES TO WELFARE REFORM

by Michael B. Katz

Even in this year of the bicentennial, the Constitution remains silent about government's responsibilities for social welfare. True, the preamble exhorts government "to promote the general welfare," but in the eighteenth century *welfare* did not mean state assistance to the poor. In fact, in our contemporary sense, *welfare* entered public discourse only in the early twentieth century. Its purpose was to describe modern, professional practice and to dissociate public assistance from the stigma of relief, which was the term that in earlier centuries had signified the help given poor and otherwise dependent people. Nor can we find references to the functions subsumed by *welfare* elsewhere in the Constitution. As historian Howard Zinn recently observed, "The Constitution is silent on the right to earn a moderate income, silent on the rights to medical care and decent housing as legitimate claims of every human being from infancy to old age. Whatever degree of economic justice has been attained in this country... cannot be attributed to something in the Constitution." Indeed, in the 1930s, when, for the first time, the federal government wanted to assume a major role in social welfare, New Dealers found the Constitution neither an inspiration nor a guide, but, rather, an impediment.¹

I

We should not conclude from the Constitution's silence that its framers remained unconcerned with poor relief as a public issue. As men familiar with international political economy, they would have read the escalating British debates over the poor laws; witnessed

the growing poverty within America's port cities; paid taxes for poor relief; and administered its distribution. They omitted poor relief from the Constitution for the same reason they excluded education. They did not consider it a responsibility of the federal government.² Here the framers followed British precedent. Although the Elizabethan Poor Laws had declared poor relief a public responsibility, they left its administration to local parishes. As they transposed the Elizabethan Poor Laws to the new world, the colonists, by and large, copied this decentralized, public system. Therefore, public poor relief is one of America's oldest traditions.³

Its local base became one of the enduring features of poor relief in America. Throughout American history, poor relief practice varied not only among states but from county to county within the same state. Even the new federal role, first in the 1930s, and extended in the 1960s, could only modify but not eliminate the local variation in welfare practice, as the persistence of wide differences in AFDC benefits among states reveals. In 1980, a Mississippi single parent family of four received, at most, \$120 in monthly AFDC benefits compared to more than \$500 in New York or California. Local control (now primarily at the state, rather than the town or county, level) thus remains one historic, structural feature of welfare in America.

Despite its local base, in America public poor relief always remained an important responsibility of government. Debates about poor laws were as vigorous in early nineteenth century America as in Britain and, national mythology notwithstanding, voluntarism never relieved most dependence in this country. In America, public funds always supported at least as many poor and otherwise dependent people as did private charity.⁴

The bifurcation between public assistance and social insurance is a second enduring structural feature of American welfare. Public assistance is means-tested relief given only to those whose resources fall below a

certain standard. Social insurance, by contrast, is not means tested. It is an entitlement for everyone eligible by virtue of fixed, objective criteria such as age, disability, or unemployment. Throughout American history, the public assistance model dominated poor relief, and social insurance developed only in the twentieth century with workmen's compensation and insurance for unemployment and old age. Today, public assistance is what we call welfare, and its major form is AFDC; the great example of social insurance, of course, is Social Security.

Two points about this division between social insurance and public assistance need emphasis. First, it was not inevitable. Early social insurance advocates hoped for a unified and coherent system embracing all forms of social welfare. Not until the New Deal in the 1930s did public policy firmly embed the distinction into the structure of America's welfare system. President Franklin Roosevelt, for one, distinguished sharply between the two. Although he sponsored the first federal relief programs in American history (the Federal Emergency Relief Administration and the Civilian Works Administration), he viewed them only as temporary emergency measures, and he turned relief back to the states as soon as possible. Subsequent legislation combined with a deliberate policy of the new Social Security Administration to widen and solidify the emergent distinction between social insurance and public assistance. In the process, *welfare* became just a euphemism for relief.⁵

As a result, American social welfare has a class structure. Social insurance serves everyone. Its base of support cuts across class lines, and much of its constituency is articulate and vigorous. Indeed, the militance of the middle class elderly pushed old age insurance to the top of the New Deal's social agenda and, nearly five decades later, defeated President Ronald Reagan's plans to trim benefits. However, its insurance ideology notwithstanding, Social Security remains an income transfer

program. Only, its supporters always obscure its similarities to what, derisively, Americans call welfare. Welfare, which is for poor people, inherits the mantle of poor relief, and those who depend on it lack both the political power to extend its benefits very far and the social status to erase its historic stigma. As a consequence, Social Security now lifts most elderly people out of poverty; AFDC almost never does the same for the single parents with children who are its primary clients. Between 1970 and 1985, the average Social Security benefit increased 400 percent; the average AFDC benefit rose only 50 percent.⁶

A third structural feature of American welfare also has a long history. Political theorist Alan Wolfe has termed it America's franchise state, and it is one product of the blurred boundary between public and private in America. Because they are so protean, the terms *public* and *private* (and the boundary between them) remain among the most difficult concepts to define in American history. In fact, their meaning has shifted continuously over time and, on close inspection, most attempts to draw hard and fast distinctions between spheres simply break down. One reason is that for centuries governments have tried to accomplish public purposes through private means. In education, to take an early example, state governments in the late eighteenth and early nineteenth centuries hoped to discharge their responsibilities for secondary education by incorporating and funding local academies sponsored and controlled by private citizens. For years the state of New York provided education in New York City, first, by funding religious groups to run their own schools and, between 1819 and the mid-1850s, by supporting a voluntary association of first citizens who conducted a vast system of schools for the city's children. Although they called their schools public, today we would think of them as private.⁷

Throughout the nineteenth century, state governments also paid voluntary associations and religious

groups to manage orphanages and institutions for most other classes of dependent people. In the 1960s, federal government support of social services expanded enormously. For example, between 1965 and 1980, federal expenses for education, training, employment, and social services increased from 1.9 to 5.9 percent of the federal budget, or about 300 percent. Most private agencies probably depend on governments for at least half their funds, and as their independence has declined, their role has changed. Voluntary agencies have become primarily service providers, not innovators. Of course in another sphere the federal government has always relied on private industry for its weapons. The question is whether the same model should guide the way we deliver human services and the way we build missiles.⁸

Supply-side policies always have dominated relief and welfare in America. This is their fourth structural feature. Public policy tried to reduce poverty by changing the behavior of poor people, for example, by frightening them with poorhouses, threatening to take away their children, training them in new skills, or regulating their sexuality. Public policy, however, has done little to address the reasons why so many young, healthy people (especially women with children) continue to find themselves in poverty; why one of four Americans fall below the poverty line for some point during the course of a decade; or why pretransfer poverty (that is, the amount of poverty before government income support programs) has not declined in the last twenty-five years. Of course prior to the twentieth century assumptions of scarcity underlay discussions of poverty. To all but a few dreamers it would have seemed preposterous to imagine its abolition. Resources were finite; life was harsh; most people would be born, live, and die in poverty. But in the late twentieth century assumptions of scarcity no longer dominate economic thought, and no inherent barriers block the search for macroeconomic policies that, finally, would attack the forces that generate poverty.⁹

Welfare in America has a fifth feature that is much newer: its extension of benefits to a wide and diverse segment of the American population. According to one expert, "By 1980...over 80 percent of poor households and 45 percent of all households received a cash or in-kind transfer in that year."¹⁰ The poorest fifth of the population receive at least half their income from the federal government. They depend, now, as much on the government as on the labor market. Between 1965 and 1980, the share of the federal budget spent on income security, social services, health, and education, training, and employment increased from 27 to 53 percent.¹¹ Between 1968 and 1978, about one of every four Americans lived in a family that received welfare (*excluding* Social Security, veterans' pensions, and medical assistance) during the decade.¹² This wide diffusion of benefits, which dates from the latter 1960s, resulted from a variety of sources. Some were demographic: the growing proportion of elderly people and single-parent families. Some stemmed from program participation: the massive increase in the proportion of eligible families claiming AFDC in the late 1960s. And some reflected policy: for example, administrative changes in eligibility standards; the transformation of the food stamp program in the late 1960s; the passage of Medicare and Medicaid in 1965; and the melding of programs into Supplemental Social Security in 1972.

Nonetheless, despite its expansion between roughly 1965 and 1980, America's social welfare system remains incomplete. This is a last important structural feature. America is the only major Western country without national health insurance or a system of family allowances. Among industrial democracies, only Japan spends less of its gross national product on social welfare. More than one of every five children in America lives in poverty. Infant mortality, at 11 per 100,000, places America seventeenth among Western nations. The rate for blacks, 19 per 100,000 (compared to 11 per 100,000 for whites), is more similar to the Third World than to other modern developed nations.

Without a major shift in public priorities, homelessness and hunger will continue to increase, and young black men will remain without work. Between 1955 and 1984, the percentage ratio of employment to the total population of black 18 and 19 year old males dropped from 66 to 34; for whites it remained nearly identical (64.2 and 60.1). In 1983, only 45 percent of black men aged 16 to 21 were employed compared to 73 percent of whites.¹³

America's economy remains unable to check the forces that generate poverty, and its social welfare system cannot alleviate the consequences. No one, in fact, likes America's welfare system. Poor people find it demeaning and inadequate: liberals consider it incomplete and irrational; conservatives, who think it too expensive, believe it erodes the work ethic and encourages immorality. The unplanned, uncoordinated, rickety foundation upon which American welfare rests explains part of its weakness. But it does not account for its resilience. Why has this unsatisfactory, often irrational, system proved so resistant to change? The answer lies in a combination of its historic purposes, the ideas on which it rests, and the interests it serves.

II

Throughout American history, poor relief and welfare have served four purposes. They are: the alleviation of distress; the regulation of the labor market; the regulation of behavior; and political mobilization. More recent is a fifth: attacking the consequences of racism. The first of these purposes, the alleviation of distress, is straightforward. One major role of relief has always been the prevention of death from starvation, homelessness, or the lack of medical care. This objective, it is important to emphasize, has not included removing poor people from poverty, or even offering them very much comfort and dignity. Rather, survival has been the primary goal. Whether

public policy or private philanthropy should lift poor people above mere survival has remained a contentious question. Unfortunately for poor people, the mean-spirited quality of most actual responses has contradicted cherished myths of generosity in the American past.

The right to survival serves only as an initial principle of policy and does not dictate answers to important and difficult practical questions. Neither public nor private resources alone, nor their combination, can supply the wants of everyone who asks for help. Resources are finite. Some line must be drawn, some criteria determined, someone's misery defined as illegitimate. During the last two centuries, definitions of legitimate need have shifted. Partly, criteria have reflected changes in the contours of poverty accompanying the successive social, economic, and demographic transformations of America. They also have revealed shifting ideas about the sources of poverty, human nature, and the role of government.

For centuries, within cities three major groups have suffered disproportionate poverty. They are women family heads with children, old people, and the unemployed. Until the last few decades, most women living alone with children were widows; and virtuous widows evoked the most consistent sympathy from public officials and private charity. For nearly everyone realized that women, especially with children, lacked any legal or moral way to earn a living. Only in recent decades, as AFDC recipients have become less often widows and more often young, unmarried, and black, have women with children lost their place among the deserving poor. In most cities, female benevolent societies emerged as the earliest, or among the very first, charitable associations. In the early twentieth century, mothers' pensions became the first state-mandated income support programs. AFDC, supplemented by food stamps, Medicaid, and sometimes subsidized housing, now support women with children, but they neither lift

them out of poverty nor, with few exceptions, help them toward independence.

Prior to the twentieth century, the status of old people fluctuated more than sentiment about poor widows. For the first three-quarters of the nineteenth century, they too usually evoked sympathy. However, although their material circumstances had not improved in any way, hardening attitudes toward poverty and relief in the third quarter of the nineteenth century significantly lessened sympathy for the elderly. Increasingly, public and private relief officials argued that most of them had fallen into poverty because of their feckless and immoral behavior. Attitudes toward old men were especially harsh. Public officials much more readily granted outdoor relief to women, and adult children more often took in their aging mothers than fathers. Men who found themselves poor in old age, many believed, deserved little sympathy because they either had failed to work hard enough or to save for their declining years. Only when old people capitalized on their political power did they win significant gains. Social Security in the 1930s, and its extension three decades later, reflected political and demographic realities, not a shift in status or sentiment. As a result of their power, the elderly have emerged as the major social policy winners in the last twenty years. Poverty among them has fallen about two-thirds. Despite their continuing unmet needs, their incidence of poverty now matches the rate for the population as a whole.¹⁴

Unlike women with children or old people, unemployed men aroused nearly universal sympathy only during the Great Depression of the 1930s. Otherwise, they have remained the pariahs among the poor. Myths of the availability of work for all able bodied men (and they have always been myths) have tinged the unemployed with the aroma of laziness and, for centuries, public and private policies unsuccessfully tried to drive them from the rolls of relief and, later, welfare. As a result, aside from unemployment insurance (which sup-

ports a decreasing proportion of those without work and offers nothing to those who have not recently been part of the regular labor force), unemployed men and non-employed women with children, as long as they are neither elderly nor disabled, find few sources of support. State General Assistance programs, one modern euphemism for outdoor relief, remain tiny, restrictive, and inadequate. Given current levels of unemployment and housing costs, one result has been the growth in homelessness and hunger.¹⁵

Relief and welfare policy reflects a second purpose as old and pervasive as the alleviation of distress. I refer to the regulation of the labor market. The impact of income support on the supply and cost of labor is the most ancient and enduring issue in discourse about poverty and welfare. Will welfare erode the will to work? Will overly generous relief policies force a rise in wages? Who will accept a hard, boring, badly paid job if welfare is an option? Always, the doctrine of less eligibility has governed relief and welfare policy. Benefits never should match or exceed the standard of living attainable by working for the lowest ordinary wages. These concerns helped prompt the attempted substitution of poorhouses for outdoor relief in the early nineteenth century. If incarceration became the price of survival, so people thought, the poor would be less eager to ask for relief and more willing to work. (The adoption of poorhouses as official policy, it should be pointed out, had other complex sources as well.) In the third quarter of the nineteenth century, concern with labor market effects also underlay the new Scientific Charity movement's harsh attempts to evaluate male applicants for relief by compelling them to submit to a work test (usually chopping wood or breaking stone). In the twentieth century, Southern agricultural interests fought to keep state welfare benefits low, objected to the wages paid by relief programs in the New Deal, and retarded the extension of Social Security to farm workers. Welfare's potential impact on work incentives stimulated the expensive and inconclusive guaranteed

income experiments of the 1960s and 1970s and framed debates about income support programs.¹⁶

Cycles of expansion and contraction punctuate the history of public welfare. Indeed, as Frances Fox Piven and Richard Cloward have argued, attempts to regulate the labor market have encouraged the extension of relief as well as its contraction. Public authorities have expanded relief primarily during depressions (although during some depressions they have cut it). They have wanted to preserve a reasonably healthy labor reserve for better times and to forestall the militance that always threatens to erupt among people who are angry, starving, and out of work. Labor market concerns even shaped relief policies on a local level. In the late nineteenth century, for instance, none of the cities along the Great Lakes abolished outdoor relief, despite the urging of reformers and the example of several other major cities. They resisted, I believe (although more research on this point is needed), because they wanted to support workers during the winter when the lakes froze and work stopped. Without relief during the winter, the labor they would need in the spring would migrate elsewhere or die of starvation.¹⁷

Welfare policy also has tried to regulate the behavior of the poor. In part, this third purpose has been political. Its goal has been to dampen or forestall militance among workers who might form unions or among poor people who otherwise might riot or join together in powerful political movements. For example, in the early twentieth century, some progressive industrialists developed programs, later referred to as welfare capitalism, with which to win their workers' loyalty and prevent the formation of unions. Decades later, the expansion of Great Society programs in the late 1960s followed the explosions in urban ghettos.¹⁸

Moral anxieties also have prompted the use of welfare to regulate the behavior of the poor. For reformers more often have located the source of poverty

in character flaws than in external conditions. Throughout the nineteenth century most commentators pointed to alcohol abuse as the greatest source of poverty, and they attacked it by promoting temperance and trying to force poor people into poorhouses where they supposedly (though not always in fact) could not drink. The other major, and related, character flaw was laziness or an unwillingness to work. Here, too, poorhouses and other punitive strategies attempted to reform behavior through compulsory work or by frightening poor people out of their sloth. In the South in the 1940s and 1950s, allegations about the sexual behavior of black women stimulated the introduction of "suitable home" provisions into AFDC regulations. Indeed, today, moral concerns about sexuality suffuse discourse about unmarried adolescent mothers on whom the responsibility for America's urban pathology and welfare problems are unfairly and inaccurately placed. Consider, as one example, proposals to restrict AFDC payments to only those adolescent mothers who live with their parents or in approved group homes.¹⁹

Political mobilization remains welfare's fourth historic purpose. Relief and welfare always have been part of the patronage apparatus through which politicians have garnered votes. In the nineteenth century, local politicians used relief policies not only to win the votes of the poor, but also to appeal to small businessmen and local professionals. Contracts for supplying poorhouses with food and fuel enriched local merchants. Orders for food redeemable at local stores helped support grocers. Cash relief often found its way to saloonkeepers. Contracts for medical care augmented the income of local doctors. In the 1930s, welfare policy became one way the New Deal lured black voters away from the Republican party and, subsequently, it helped cement the allegiance of minorities and the urban poor to the Democrats. Indeed, in 1963, President Kennedy told Walter Heller, then chairman of the Council of Economic Advisers, that political imperatives demanded a program targeted directly at the poor, partly because

the recent tax cut had helped only the middle class. Conversely, opposition to relief and welfare also has persisted as a historic means for mobilizing political support. In the 1870s, Brooklyn's Republican reformers capitalized on the graft that infected the city's welfare system not only to abolish outdoor relief but to ride to political power. The new mayor, Seth Low, later also mayor of New York City and president of Columbia University, was only one of a series of politicians to ride the anti-welfare theme to political power, as we have witnessed in much more recent times.²⁰

In the 1960s a new objective joined welfare's four historic purposes. It was the use of social policy to attack the consequences of racism. The Civil Rights Bill of 1964 and the voting rights legislation of 1965 completed the first phase of the movement's agenda; the great Watts Riot in Los Angeles in 1965 peeled away the remaining covers from the anger, despair, and frustration that remained within urban ghettos. In the aftermath of these events, civil rights leaders, including Dr. Martin Luther King, Jr., increasingly stressed the connection between discrimination and poverty, and they argued that welfare reform, job creation, and income support were essential to progress for blacks. Issues of race and economic justice fused, to take one example, in the welfare rights movement, inspired and led by black women. They joined, as well, to help ignite the War on Poverty and sustain its one potentially radical innovation: its emphasis on maximum feasible participation and community participation. Even though the War on Poverty failed in its ultimate objective, it opened to a new generation of minority leaders (many of them women) their first official channels to politics and power.²¹

III

Conflicts between welfare's historic purposes have helped defeat fundamental reform. So has the complex tangle of interests served by relief and welfare. Most of these are implicit in what has already been described. In a bumbling way, the current welfare system continues to help regulate labor markets, although its inefficiencies probably have helped prompt the current interest in reform. Employers in low wage service industries confront a labor shortage while millions of women remain out of the work force, supported by AFDC. This, I suspect, has fueled calls for welfare reform defined as workfare, or forcing women with children into primarily low wage, dead-end jobs. Welfare also has a huge and often vocal clientele among the large fraction of Americans (remember by no means all poor) who draw on its diverse benefits. Even more, the welfare system has turned into a vast employer of the middle class. Especially through the social services, the expansion of welfare has created a great interlocking public and private bureaucracy dependent not only on public funds but on the structural arrangements they support. Welfare reform, whether in the form of cutting benefits or redesigning their delivery, now confronts a smart, powerful internal opposition.²²

Ideas about poverty and poor people have compounded the barriers to welfare reform. Most important is the ancient preoccupation with classifying poor people, reflected in the historic distinction between the deserving and the undeserving poor. This moral distinction replaced older divisions between neighbors and strangers; able bodied and impotent; and the poor and paupers. *Pauper* originated as an administrative category. Paupers were (and strictly speaking still are) recipients of public relief. Although by itself poverty carried no stigma, pauperism did. During the early nineteenth century, the distinction between poverty and pauperism hardened, and commentators increasingly

attributed the latter to moral sources. This transmutation of pauperism into a moral category tarnished all the poor. Despite the effort to maintain fine distinctions, poverty itself increasingly became not the natural consequence of misfortune, but the willful result of indolence and vice.

The redefinition of poverty as a moral condition accompanied the transition to capitalism and democracy in early nineteenth century America. It served to justify the mean spirited treatment of the poor, which, in turn, checked expenses for poor relief and provided a powerful incentive to work. In this way the moral definition of poverty helped assure the supply of cheap labor in a market economy increasingly based on unbound wage labor. The moral redefinition of poverty followed also from the identification of market success with divine favor and personal worth. Especially in America, where opportunity awaited everyone with energy and talent, poverty signaled personal failure. The ubiquity of work and opportunity, of course, were myths, even in the early republic. The transformation in economic relations, the growth of cities, immigration, the seasonality of labor, fluctuations in consumer demand, periodic depressions, low wages, restricted opportunities for women, industrial accidents, high mortality, and the absence of any social insurance all embedded chronic poverty and dependence into the structure of American social life.²³

Persistent and increasing misery did not soften the moral definition of poverty. Neither did the evidence available through early surveys or the records of institutions and administrative agencies.²⁴ Instead, the definition hardened until nearly the end of the nineteenth century. As a consequence, public policy and private charity remained mean, punitive, and inadequate. With tiresome consistency, moral definitions of poverty found support in the latest intellectual fashions: in the antebellum period, Protestant theology; after the Civil War, in the work of Darwin and early hereditarian

theory; and, in the twentieth century, in eugenics. So deeply embedded in Western culture had the distinction between the deserving and undeserving poor become that even writers on the left invoked it automatically or translated it into their own vocabulary. Thus, Marxists wrote about the "lumpenproletariat," and the Progressive-era reformers who, starting in the 1890s, rejected individual explanations of poverty, unreflectively used the old distinctions. Even Robert Hunter, a Socialist, whose widely-read book *Poverty* (published in 1904) traced dependence to its structural sources, used the hoary distinction between the deserving and undeserving poor.²⁵

The moral classification of the poor survived even the Great Depression. To be sure, poverty lost much of its moral censure as unemployment reached catastrophic levels. But relief remained pejorative and degrading, and the unemployed turned to the state for help usually only as a last resort, after they had exhausted all other possibilities of survival. President Franklin Roosevelt hardly could wait to move the federal government out of the business of relief, which it had reluctantly and temporarily entered in 1933, and the foundation of the social welfare edifice erected by his administration became the distinction between public assistance and social insurance that assured public policy would continue to discriminate invidiously between categories of dependent people.²⁶

During the Second World War and the prosperous fifties, poverty received little explicit attention by social scientists. However, the rhetoric surrounding controversies about public welfare (especially Aid to Dependent Children) showed that the moral classification of poor people had persisted.²⁷ In the nineteenth century, asking for relief became a sign of individual failure, and no label carried a greater stigma than pauper. By the second half of the twentieth century, some groups in need of help had been moved out of the pauper class. Most old people, workers disabled in accidents, some of

the unemployed (not to mention veterans, always a special category) could claim help as a right through social insurance. Others, most notably women who headed families with children, remained dependent on means-tested public assistance, morally tarred, as always, by their association with relief.

In the early 1960s intellectuals and politicians rediscovered poverty. Sustained economic growth and celebrations of affluence had hidden the stubborn persistence of deprivation and dependence, and Americans appeared shocked to discover that between 40 and 50 million among them were, by any objective measure, poor.²⁹ To interpret the meaning of these no longer avoidable and disheartening facts, social scientists drew on a new concept: the culture of poverty. The culture of poverty did not have the classification of poor people as its primary purpose. Still, it served the same end. For most writers observed that the culture of poverty did not capture all poor people. Rather, it placed in a class by themselves those poor people whose behaviors and values converted their poverty into an enclosed and self-perpetuating world of dependence. Although some of its exponents located the sources of poverty in objective factors, the new concept resonated with traditional moral definitions. The culture of poverty could not quite sanitize the poor; their ancient odor seeped through the antiseptic layers of social science. They remained different and inferior because, whatever their origins, the actions and attitudes of poor people themselves assured their continued poverty and the poverty of their children. Despite the liberalism of its originators, by the 1970s the culture of poverty had become a conservative concept, thought of as a justification for mean and punitive policies.

By the mid-1980s, a new image dominated poverty discourse. Invoked unreflectively and automatically by commentators on poverty, *underclass* captured the mixture of alarm and hostility that tinged the emotional response of more affluent Americans to the poverty of

blacks increasingly clustered and isolated in central cities. What bothered observers most was not their suffering. Rather, it was their sexuality, expressed in teenage pregnancy; family patterns, represented by female-headed households; alleged reluctance to work for low wages; welfare dependency, incorrectly believed to be a major drain on national resources; and propensity for drug use and violent crime, which had eroded the safety of the streets and subways. Despite the precision with which serious social scientists, notably William J. Wilson, brought to the concept, *underclass* emerged from the work of Ken Auletta and Nicholas Lemann, its two most widely ready popularizers, as imprecise, with its sources specified either inadequately or inaccurately. The underclass seemed little more than the most modern euphemism for the undeserving poor.

Like other moral classifications of the poor used throughout American history, *underclass* inhibits reform. Aside from the moral judgment it implies, *underclass* focuses debate on a subset of the poor. It deflects attention away from comprehensive social policies and encourages targeted approaches that historically have isolated their beneficiaries and reinforced the stigma attached to poverty and relief. *Underclass* also revives discredited notions of the culture of poverty by highlighting the behavior of poor people rather than the sources of their poverty. One last implication is even more serious: by diffusing an image of poor people as split into two sharply divided groups, *underclass* helps perpetuate their political powerlessness by strengthening the barriers that for so long have divided them against each other.

Its market-based framework also has constrained debate about poverty and welfare. This hegemony of market models in poverty discourse has two effects. First, by accepting the separation of economics and politics introduced in nineteenth century liberal thought, poverty discourse reifies the market as the regulator of economic relations. Intrusion in the market or inter-

ference with its natural working becomes, by definition, illegitimate and destructive. Government policy that redistributes or supports income is redefined as contrary to the laws of nature. At the same time, market models evaluate the reciprocal obligations of public policy and the poor in terms of exchange. With only a few exceptions (most notably, in recent years, bishops in the Catholic Church), both conservative and liberal welfare analysts use as their criteria wage-rates, productivity, and economic efficiency. For instance, during the years of the Great Society between 1965 and 1980, the major concern of the liberal economists who dominated poverty research remained the impact of income supports on work incentives. With the partial exception of legal scholars and moral philosophers, no recent American students of poverty and welfare have advanced the theoretical foundations of the welfare state or transcended the conventional boundaries of a liberalism that almost everyone agrees has grown stale. This intellectual and moral bankruptcy among the welfare state's supporters eased the way for the conservative revival. In fact, together, liberals and conservatives have produced a literature bounded by a narrow and constricted vision of social bonds and obligations. As much as the historic division of poor people into moral categories, the assimilation of social obligations by the marketplace retards the rejection of worn out ideas and the formulation of just and compassionate public policies.²⁹

IV

The legacy of American welfare seems a gloomy mix of contradictory purposes, entrenched interests, intellectual rationalization, and moral callousness. And so it is. Nonetheless, some possibilities, bits of hope, lurk amid this dark, resilient tangle. Let me conclude by pointing to four of them.

First we now possess the resources to alleviate all poverty in America. Unlike nineteenth century reformers, we need not start with assumptions of scarcity. Even the budget deficit and potential energy shortages cannot entirely obscure the abundance of American life. In fact, the costs of eliminating poverty pale beside those for defense and space exploration. About \$15 billion would lift almost all women on AFDC above the poverty line. Every year we pay billions of dollars to farmers not to grow crops that could feed hungry people. American technology never has been unleashed on the housing and infrastructural problems in its cities.

Second, we have entered a new phase in the dialectic of reform. Ronald Reagan's greatest service to the poor has been to arouse defenders of the welfare system from their lethargic complacency. His cutbacks, both proposed and real, have promoted a new coalition of liberals and radicals who, not long ago, fought each other instead of their common opponents. Besides the formation of new political alliances, scholarship has revived as historians and social scientists have begun to re-explore poverty and welfare with unprecedented sophistication and an intensity unmatched for at least two decades. The 1980s could be the dawn of a golden age of American writing about poverty and welfare and even of creative proposals for public policy.

Third, the New Deal and the Great Society provided a solid record of government achievement. They showed that government in America can be a great force for social progress. Between the early 1960s and the late 1970s, the federal government reduced the incidence of poverty among the elderly by about two-thirds; vastly increased the availability of medical care for the poor; decreased hunger and malnutrition; and greatly expanded the stock of low cost housing. As with the great civil rights legislation of the same years, none of these accomplishments are complete, and many have been stalled, if not partly reversed. But they stand as both a legacy and a precedent.

Finally, America's welfare system is not the result of an inexorable response to urban-industrial society, modernization, or some other great impersonal imperative. It is a historical product, the result of choices among alternative possibilities made at different moments during more than two centuries of American history. The women and men who built America's welfare system, of course, lacked complete freedom. Resource shortages, politics, ideology, even the Constitution, all constrained the possibilities before them. But they never lacked alternatives, and debates among sane, intelligent people marked the creation of relief and welfare policy at every point. One moral, I think, is this: the reason for studying history is to transcend it, not to become its prisoner. Because far more possibilities exist than we usually allow ourselves to imagine, the greatest contemporary obstacles are a lack of will and imagination. America, in the last analysis, will have just as much poverty as it wants.

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PUBLIC POLICY AND MENTAL ILLNESS: A CONSTITUTIONAL ANALYSIS

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I

The American political system, which divided authority and power to govern between the central and sovereign state governments, has had both admirers and critics. Indeed, during the nineteenth century the federal Constitution became a model for many nations seeking to escape monarchical and colonial absolutisms of one sort or another. Yet the consequences of the peculiar nature of the American system of government have often been ignored. There has been little or no effort to relate political structure and public policy, if only because most scholars have assumed that more fundamental determinants (e.g. economic) shape social and political processes. Using the mentally ill as a case study, I should like to demonstrate how a particular constitutional system or structure of government can affect public policy. This is not to argue that governmental structure plays the most decisive role. It is only to suggest that the distinctive American framework of government helped to shape certain kinds of policies.

Before the American Revolution the problems posed by mentally ill were relatively minor. Population density tended to be low, and most communities were predominantly rural or agricultural. Hence the number of mentally ill people was never large, and most were

* The research for this paper was supported by a grant from the National Institute of Mental Health (MH39030), Public Health Service, U.S. Department of Health and Human Services.

dealt with on an ad hoc or informal basis by either the family or local officials. As a matter of fact, the mentally ill became a matter of public concern only if they were unable to care for themselves or lacked a family. In such instances they came under the jurisdiction of the English Poor Law system whose foundations antedated the passage of the famous Elizabethan Poor Law legislation between 1597 and 1601. This system was based on the principle that society had corporate obligation for poor and dependent persons, and virtually every American colony enacted legislation that recreated the English arrangement. Under this system local communities, rather than the colony or mother country, had fiscal and supervisory responsibility for those persons incapable of surviving without some form of assistance. The preoccupation of the British and colonial governments with imperial issues only reinforced the absence of any efforts to forge systematic social policies to deal with dependent persons.

The creation of a federal system of government in the 1780s was hardly significant insofar as care of the ill or dependent was concerned. Two centuries of imperial rule had created grave mistrust toward any centralized authority. The federal Constitution in many respects institutionalized these misgivings by sharply restricting the authority of the federal government and by retaining a large reservoir of power for the states. The Tenth Amendment explicitly stated that the "powers not delegated to the United States by the Constitution" were "reserved to the States respectively, or to the people." However the Constitution is interpreted, it is clear that its authors believed that responsibility for health and welfare resided with state and local governments and not the national government. Consequently, social welfare in the late eighteenth and nineteenth centuries revolved around state and local governments acting in concert with various private organizations and individuals.

The agricultural and rural character of American society in the Revolutionary and post-Revolutionary era precluded any serious consideration of structural changes to deal with ill or dependent persons. After 1800, however, new circumstances created conditions that ultimately led to a reliance on some form of institutional care of the mentally ill. A chain of circumstances--demographic changes (including population growth, geographical mobility, urbanization, and immigration), a growing awareness of social and medical problems, a consequent transformation in attitudes toward and perceptions of mental illnesses, a surge in philanthropic giving by elites, increased knowledge of medical and psychiatric innovations in France and England, and religious and intellectual innovations--all combined to give rise to a movement to establish institutions specializing in the care and treatment of the insane. The transformation of insanity into a *social* problem requiring state intervention (as contrasted with familial and community responsibility) was by no means unique; the nineteenth century was notable for its proliferation of institutional solutions and the transfer of functions from families to public or quasi-public structures. In 1820 only one state mental hospital existed in the United States, but by the Civil War virtually every state had established one or more public institutions for the care and treatment of the mentally ill.

The founding of these public hospitals, however, did not occur in a social or political vacuum. The tradition of local autonomy that had grown out of two centuries of colonial experience continued to influence both the creation and the administration of welfare policies. In theory, the powers of communities derived from and were dependent on the actions of sovereign state governments. In practice, however, localities had

de facto authority to deal with many of the problems relating to dependency. Much of the early legislation pertaining to the mentally ill, therefore, continued to be based on the assumption that local communities would share responsibility with the state government. The old colonial tradition of local autonomy continued even at a time when rapid social and economic change prompted greater centralization. In general, state legislatures provided the capital funds necessary for acquiring a site and constructing a physical plant, as well as providing for expansion and renovation. Local communities, on the other hand, were required to pay the hospital a sum equal to the actual cost of care and treatment of each patient. The system, moreover, did not assume that every mentally ill person would be committed to a state institution. Only dangerous mentally ill individuals were required to be sent to state hospitals. Others who could benefit from therapeutic interventions (and thus ultimately removed from the welfare rolls) could, at the discretion of local officials, be institutionalized. The system, in short, involved divided responsibility. For much of the nineteenth century, therefore, a significant proportion of insane persons were kept within the community, often in municipal almshouses. Families with sufficient private resources could commit their relatives to state institutions, but only if they were willing to pay for their upkeep. Finally, most states accepted fiscal responsibility for individuals who did not have a legal residence, such as incoming immigrants.

Practices, to be sure, varied somewhat from state to state and region to region. Some paid the salaries of hospital officials directly out of the state treasury. Others provided subsidies so that communities would pay a sum below the actual cost. Some required local officials to pay for patients whose families were independent but could not afford the costs of protracted care. And some, as a result of experience, assumed all the charges of supporting either poor or indigent patients. Nevertheless, the presence of individual varia-

tions did not conceal the fact that jurisdiction over the mentally ill was divided between two (unequal) levels of government--state and local.

Dual responsibility for the mentally ill had significant repercussions. The system tended to promote competition and rivalries that were inherent in overlapping governmental jurisdictions. In many states the stipulation that individual communities were financially liable for their poor and indigent insane residents created an incentive for local officials to retain them in almshouses where costs were lower. If the state, on the other hand, assumed fiscal responsibility for all mentally ill persons, localities were apt to send their patients to state hospitals in order to relieve their constituents from any fiscal burden. Many hospitals were also adversely affected by a divided governmental structure. The patient charge (generally set by the legislature) was often insufficient or marginal; slow and delinquent payments by local authorities caused severe cash-flow problems; and inadequate or tardy state appropriations compounded existing difficulties. Hospital officials, moreover, faced unremitting pressure from communities to discharge patients in order to save money irrespective of their condition. Local authorities on occasion went so far as to try to force hospitals to reimburse the community for work performed by patients even though such labor was part of a therapeutic regimen.

Cognizant of the administrative and humanitarian problems created by divided authority, a number of states moved to assume total responsibility for all persons in public mental hospitals. This tendency was most apparent in the more recently settled western states. By 1860 Ohio, Indiana, Illinois, Wisconsin, and California paid the full costs of hospitalization irrespective of the patient's financial situation. Kentucky, Missouri, Louisiana, Tennessee, Mississippi, and Georgia limited their support to the pauper insane. Other states modified their laws by contributing to the operating

budget of mental hospitals, paying salaries, or providing a fixed appropriation. Although easing tensions, such developments did not resolve the problem, if only because available facilities during the nineteenth century were incapable of accommodating all cases of mental illnesses.

For virtually all of the nineteenth and a good part of the twentieth century the federal government was not involved with mental health policy. The only effort to expand its role was undertaken by Dorothea L. Dix, the redoubtable advocate of public institutional care for the mentally ill. In 1848 she presented a lengthy memorial to Congress requesting legislation that provided for the distribution of five million acres of federal land to the states, the proceeds of which would be used for the support of the indigent insane. Precedents for such a subsidy already existed, since educational institutions and railroads had already benefited from federal land grants.

For six years Dix labored strenuously to persuade members of Congress that the project was desirable and important. Initially legislators evinced little interest in the bill; the sectional conflict that had intensified after the end of the Mexican War absorbed their time and energies. Her determined and persistent lobbying, however, soon paid dividends. When the thirtieth Congress permitted the bill to lapse, Dix returned with a bill requesting more than twelve million acres, and subsequently asked for an appropriation to establish an insane hospital for military personnel to be located in the District of Columbia.

Much of the debate in Congress revolved around the constitutional question of whether the federal government possessed legal authority to use the public domain for such projects. In 1854 Congress finally passed a bill granting ten million acres to the states for the support of the indigent insane. Dix's ecstasy over

her success proved of short duration, for the act met with a presidential veto. "I cannot but repeat what I have before expressed," wrote Franklin Pierce in his message to Congress, "that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are proceeding to establish them, shall be led to suppose, as they will be, should this bill become a law, that Congress is to make provision for such objects, the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their own people, may themselves, through the strong temptation, which appeals to States as to individuals, become humble supplicants for the bounty of the Federal Government, reversing their true relation to this Union." Pierce, of course, was expressing a philosophy of individualism that assumed a minor role for the federal government. When a presidential veto was sustained by a wide margin, the issue of federal support disappeared as a viable alternative for nearly a century, even though the following year Congress enacted legislation that established the Government Hospital for the Insane (later Saint Elizabeth's Hospital).

III

During the last third of the nineteenth century, the involvement of state governments in welfare and dependency intensified. Rapid economic and industrial change, geographical mobility, a growing and increasingly heterogeneous population, the emergence of new family structures, the concentration of population in large urban areas, and recurring business cycles, all helped to undermine a welfare system designed in a quite different era. The perceived crisis in public welfare had profound implications for the mentally ill, if only because public hospitals constituted the single

largest welfare investment by states in the nineteenth century.

Beneath the rhetoric that accompanied debates over the proper configuration of public policy lay several complex and perhaps unresolvable issues. At any given time a certain percentage of patients admitted to hospitals failed to recover and thus required care for extended periods of time. The accumulation of chronic cases posed troublesome policy issues. Should states continue to build and maintain large and relatively costly centralized hospitals for the growing mentally ill population? Did the presence of large numbers of chronic patients undermine the therapeutic goals of hospitals? Was it appropriate to confine mentally ill persons in almshouses merely to save money? What level of government--local or state--should bear the burden of support?

Persuaded that the existing system was counter-productive and irrational, a group of social activists drawn from medicine and welfare began to agitate for an end to the division of authority between community and state. New York led the way with the passage of its famous and influential State Care Act in 1890. This legislation ended dual responsibility for the mentally ill. Under its provisions all insane persons were to be cared for in state hospitals at state expense. Other states soon followed suit, and after 1900 state care became the norm rather than the exception. Such laws reflected the Progressive era tendency to expand the social welfare functions of state government.

The assumption of those who favored centralization was that community care in almshouses, although less expensive, was also substandard and thus perpetuated chronicity and dependency. Conversely, treatment in hospitals, even though more costly initially, would in the long run be cheaper because it would promote recovery and thus enable mentally ill persons to resume a produc-

tive life. In short, the new public policy was assumed to be more cost effective in the long run.

The consequences of what at that time was a radical innovation in public policy, however, proved to be quite unexpected. Most local officials were more than willing to surrender their role in providing care for mentally ill residents. But these same officials went much further than the proponents of state care had ever anticipated. Traditionally, nineteenth-century almshouses (which were supported and administered by local governments) served in part as old-age homes for senile and aged persons. The passage of state care acts provided local officials with an unexpected opportunity; they began to redefine senility in psychiatric terms and thus began to transfer aged persons from almshouses to mental hospitals. Humanitarian considerations played a relatively minor role in this development; economic considerations were of paramount significance, for they involved a further transfer of the burden of support to the state.

In the background of this shift of senile aged persons to mental hospitals were also demographic considerations. There was a marked rise in the general population of those aged sixty or over. In 1860 only 4.3 percent of the population was sixty or over; in 1900 and 1940 the comparable figures were 6.4 and 10.4 percent, respectively. In terms of absolute numbers, the change was even more striking. In 1860 only 1,348,000 persons were sixty or over, between 1900 and 1940 the number rose from 4,872,000 to 13,748,000.

Faced with rapidly escalating expenditures, communities were more than happy to transfer responsibility for their aged residents to state-supported facilities. Between 1880 and 1920, therefore, almshouse populations (for this and other reasons) declined precipitously. What occurred, however, was not a deinstitutionalization movement, but rather a lateral transfer of individuals

from one institution to another. In the twentieth century mental hospitals began to serve a surrogate old age homes. By 1950, for example, 40 percent of all first admissions to New York state mental hospitals were aged sixty or over. In their classic study of rates of institutionalization covering more than a century, Herbert Goldhamer and Andrew Marshall found that the greatest increase occurred in the category of sixty-year-olds and over. In 1885, age-specific first admission rates in Massachusetts for males aged sixty or over was 70.4, and for females 65.5 (per 100,000). By the beginning of World War II, the corresponding figures were 279.5 and 223.0.

At the same time that the proportion of aged patients was rising, mental hospitals were accepting large numbers of individuals whose behavioral peculiarities were related to an underlying somatic pathology. Between 1911 and 1920, for example, about 20 percent of all male first admissions to New York State mental hospitals were cases of general paresis (the comparable rate for females was one-third that of men). In general, at least one-third and probably one-half or more of the first admissions represented cases in which aberrant behavior was related to some specific somatic condition. High death rates among recently admitted patients suggest as much.

For mental hospitals the change in the character of the patient population was of major significance; it represented a dramatic increase in chronicity and further shift away from therapeutic goals. The fact of the matter was that there were not effective therapeutic interventions for cerebral arteriosclerosis, paresis, Huntington's chorea, and other comparable conditions. The best that mental hospitals could offer was a better quality of medical and physical care for individuals who were incapacitated and had little prospect of recovery. Whether or not mental hospitals were the appropriate institutions for such persons was beside the point; some

form of care was required, irrespective of the setting in which it was provided. That publicly-supported institutions took on this role was not surprising, given the absence of viable alternatives and the high costs incurred in cases requiring protracted hospitalization.

Admittedly, chronicity had always posed troubling problems for mental hospitals. Nevertheless, most patients in the nineteenth century were institutionalized for relatively short periods of time (generally three to nine months). Toward the close of the century this pattern was reversed; the proportion of short-term cases fell and those of long-term increased. In 1904, 27.8 percent of the total patient population had been confined for less than a year. By 1910 this total had fallen to 12.7 percent, although it rose to 17.4 percent in 1923. The greatest change came among patients institutionalized for five years or more. In 1904, 39.2 percent of patients fell into this category; in 1910 and 1923 the respective percentages were 52.0 and 54.0 percent, respectively. Although data for the United States as a whole are unavailable after 1923, the experience in Massachusetts was perhaps typical. By the 1930s nearly 80 percent of its available mental hospital beds were occupied by chronic patients.

That mental hospitals were caring for a chronic population was self-evident. Yet as late as 1940 the implications of this development were still to be felt. On the contrary, the framework of mental health policy appeared stable. By and large there was a consensus that care and treatment would be provided in state institutions for all persons irrespective of their ability to pay the high costs associated with protracted hospitalization. In 1941 the average daily census in state hospitals had reached nearly 410,000. A substantial percentage of each state budget was devoted to the institutional care of the mentally ill. Expenditures for maintenance amounted to about \$307 per patient per year, and the

total amount expended by all states was over \$125 million (a substantial sum by the standards of that era).

IV

In the postwar decades, however, the consensus on mental health policy virtually vanished. By the 1960s the legitimacy of institutional care and treatment had become problematic. Activists promoted a new policy whose goal was to provide care and treatment within the local community rather than in the state mental hospital. Indeed, contemporaries often referred to a third or fourth "psychiatric revolution" equal in significance to the first "revolution" when Philippe Pinel broke the chains of Parisian lunatics in 1793. By the 1970s "deinstitutionalization" had become the dominant theme. State mental hospitals were declining in size and importance, and--perhaps most significantly--the federal government was playing a more and more important role in mental health policy. The result was a radical transformation in the manner in which policies toward the mentally ill were formulated and implemented.

What elements shaped the transformation of public policy in the postwar decades? The answer to this question is neither simple nor straightforward. A number of different developments converged to reshape public policy: a shift in psychiatric thinking and greater receptivity to a psychodynamic model that emphasized life experiences and the role of environmental influences raised the possibility of using therapeutic interventions before the onset of any acute stage of severe mental illness; the movement of psychiatrists away from mental hospitals and into the community and private practice; the belief that psychiatry could promote prevention by contributing toward the amelioration of social problems that allegedly fostered mental diseases; the experiences of World War

II, which appeared to demonstrate the efficacy of community and outpatient treatment; the rise of nonmedical mental health occupations, which contributed to the growing significance of community clinics; the deterioration in the physical condition as well as the image of mental hospitals, with the consequent loss of faith in their legitimacy; and the introduction of psychotropic drugs that held out the promise of a more normal existence for patients outside of institutions.

Equally important, however, was an unforeseen but remarkable shift in the role of the federal government, which became an active participant rather than a passive bystander. Support for new federal initiatives came from individuals opposed to the traditional emphasis on mental hospital care. To develop new policies in forty-eight states seemed impractical. Hence they sought to use the prestige and resources of the national government in an attempt to reshape mental health policy. Oddly enough, federal activism came at a time when the older nineteenth-century tensions that existed between local communities and state governments had largely diminished. In the postwar era, however, the conflicts engendered by an overlapping and decentralized constitutional structure were transferred to the national arena. Federal policy ultimately came to rest on the assumption that the authority and function of state governments in the mental health field should diminish and that local communities should become more active and prominent. The judicious use of federal funds would hasten the transition to a community-oriented policy. Although policy debates were phrased on medical and scientific language, there is no doubt that the constitutional framework (which divided sovereignty and authority) shaped their nature in subtle but significant ways.

Prior to the New Deal, the federal government had few responsibilities insofar as the mentally ill were concerned. In 1882 Congress had enacted a law forbid-

ding the admission of insane immigrants, and enforcement of this measure fell to the Public Health Service (PHS). In 1930 a Division of Mental Hygiene within the PHS was created, but it dealt only with narcotic addiction problems. During the late 1930s a quiet campaign was launched to persuade Congress to establish a National Neuropsychiatric Institute within the PHS modeled somewhat along the lines of the National Cancer Institute (established by law in 1937). This proposal involved federal support for research on mental illness. Preoccupation with war-related issues, however, precluded any congressional action at the time.

Curiously enough, the transformation of the federal government into an active partner in the mental health field did not occur because of legal or constitutional changes. On the contrary, social, economic, and political elements played a far more decisive role. The crisis of the 1930s had hastened the emergence of a welfare state ideology that had altered in fundamental ways the scope of federal activities. Moreover, the role of scientists and intellectuals in the formulation and implementation of public policy had dramatically increased. World War II not only confirmed but accelerated these trends. Indeed, between 1941 and 1945 large numbers of young individuals from the social, physical, natural, and medical sciences were employed in federal agencies or the military. Their experiences, when superimposed on the events that occurred during the Depression of the 1930s, led them unerringly to the conclusion that national problems required national solutions.

Toward the end of the war a small group revived the concept of a national neuropsychiatric institute within the federal government. Led by Robert H. Felix, a psychiatrist who headed the Division of Mental Hygiene, a small but highly organized group managed to persuade Congress to consider the proposal. At that time a broad coalition of medical and social activists was on

the verge of succeeding in their efforts to transform the role of the federal government in health policy by securing legislation (e.g., the Hill-Burton Act of 1946) that would appropriate large subsidies for hospital construction, research, and medical education. Felix and others were aware of this impending change in health policy and were determined to ensure that the problems of mental illnesses not be excluded. In July, 1946, Congress enacted and the president signed the National Mental Health Act--a piece of legislation destined to reshape sharply the respective roles of the federal and state governments.

The National Mental Health Act had three basic goals. First, to support research relating to the causes, diagnosis, and treatment of neuropsychiatric disorders. Second, to train professional personnel in psychiatry by awarding individual fellowships and institutional grants. Finally, the act funded grants to states to assist in the establishment of clinics and treatment centers, and to underwrite demonstration studies dealing with the prevention, diagnosis, and treatment of neuropsychiatric disorders. Financial support for institutional care and treatment was specifically excluded.

What was most significant about the National Mental Health Act was not its specific provisions, but rather its general goals and the way in which they were to be implemented. The measure provided financial and institutional support for research, much of which was based on the assumption that the roots of mental illnesses could be traced to broad social and environmental determinants. Indeed, under Felix the energies of the National Institute of Mental Health (NIMH)--which came into formal existence in 1949 under the provisions of the Act--emphasized the social bases of mental disorder; extramural biomedical research was never assigned a high priority, perhaps in part because research into basic physiological processes relating to the mental illnesses may not have been possible in the 1940s.

Whatever the reasons may have been, it is clear that the legislation promoted a social model of mental disease and an emphasis on community treatment rather than institutional care.

The passage of the National Mental Health Act and the subsequent creation of the NIMH had profound political and policy ramifications. Before World War II mental health policy tended to be somewhat fragmented. Although the activities of certain states--notably New York and Massachusetts--were closely monitored by others and their examples often emulated in one form or another, there were few opportunities to debate public policy issues on a national level and to avoid more local or regional concerns. State funding patterns tended to follow traditional patterns and were generally concentrated on the support of mental hospital systems. Nevertheless, decentralization also promoted a certain degree of diversity. Wisconsin, for example, developed a unique system of county facilities that provided care for chronic patients. Its state hospitals, therefore, rarely retained patients for prolonged periods.

The establishment of NIMH, however, introduced a completely new element, for its officials had the capacity to speak to a national constituency that transcended the narrower interests of individual states. As the federal agency most directly involved with mental health, NIMH could frame a national agenda. It could also employ its rapidly increasing fiscal resources to promote the kind of policy innovations that its officials desired. Its identity as a medical and professional agency only enhanced the authority and legitimacy of its staff. Moreover, close ties with congressional leaders of both parties gave NIMH officials an opportunity to provide the data that would ultimately reshape mental health policies. In short, the very existence of NIMH gave individuals both within and without the federal government an institutional base to promote innovation. The new federal role ultimately

had a dramatic impact on the mental health policies of state government.

The views of Robert H. Felix, who directed NIMH from its founding until 1964, were suggestive of the shape that mental health ideology and policy would take in the postwar decades. In his eyes mental disorders constituted "a true public health problem," the resolution of which required three things: more knowledge about the etiology and nature of mental diseases; more effective methods of prevention and treatment of mental illnesses; and better trained staff. Although reluctantly conceding that the mental hospital would be required for the immediate future, Felix insisted that the greatest need for a large number of outpatient community clinics (probably modeled after prewar child guidance clinics as well as World War II battalion aid stations that provided emergency psychiatric treatment) to serve individuals in the early stages of any mental disease. Not only would these clinics avoid the stigmatization associated with mental hospitals, but they would pave the way for effective preventive programs:

Within a year after the passage of the National Mental Health Act, Felix was exploring the possibility of short-term training courses for physicians and other workers to organize and staff the community mental health program. "The guiding philosophy which permeates the activities of the National Institute of Mental Health," he told his American Psychiatric Association colleagues in 1949, "is that prevention of mental illness, and the production of positive mental health, is an attainable goal." In effect, Felix was implicitly suggesting that the psychodynamic model of mental illnesses was appropriate for the formulation of public policy.

Although a considerable part of the extramural research sponsored by NIMH in its early years dealt with etiology and treatment, it is noteworthy that much of this research was conducted by social scientists. Such a

funding pattern, of course, reinforced and underscored the view that social determinants played a far more important role in etiology, and that community rather than hospital treatment, represented the most desirable public policy choice.

With the support of NIMH's Community Services Branch, which provided matching federal funds, community mental health programs expanded rapidly. Before 1940 community clinics existed largely to serve the needs of children and delinquents; after 1945 their clientele began to include the general adult population. Although mental hospitals continued to absorb the lion's share of state mental health budgets, the assumption was that an alternative community program based on prevention and early treatment would eventually diminish or eliminate the need for hospitalization. The community mental health program, by identifying mental illnesses in their early stages, would prepare the groundwork for treatment either in community clinics or in psychiatric wards of general hospitals. During the 1950s the number of community clinics increased rapidly. NIMH was extraordinarily successful in creating a constituency composed of professional personnel employed at these clinics that could be mobilized at critical moments. Admittedly, federal officials were not alone in supporting a community-oriented program. Indeed, the Council of State Governments as well as the Governors' Conferences in the 1950s strongly endorsed this new approach which held out hope of arresting the ever-rising mental hospital population. Moreover, private foundations such as the Milbank Memorial Fund and many university-affiliated departments of psychiatry (which were headed by psychodynamic psychiatrists) added to the chorus of approval. The role of NIMH in conferring legitimacy on a noninstitutional approach, nevertheless, must not be minimized.

By the 1950s proponents of change were arguing that the time was ripe for another public policy shift that would transfer part of the burdens posed by mental illnesses from the states to the federal government while at the same time developing new initiatives that might reduce the costs of institutional care. The passage of the National Mental Health Act was only a beginning; what was required was legislation that provided for direct federal subsidies for mental health services. That a biomedical lobby was now in existence and flourishing suggested that such new policy initiatives would receive a sympathetic hearing in Congress. Equally significant, a national campaign could employ the media to bring a message of hope to an eager and enthusiastic public trustful of the claims of mental health experts from the medical profession as well as from the social sciences. The growing significance of social science in the postwar era undoubtedly added legitimacy to the clamor for change. Finally, the introduction of neuroleptic drugs in the 1950s helped to create an expectation that severely mentally ill persons could be treated outside of traditional institutions.¹

To expand the role of the federal government in mental health required some strategic planning. Dr. Kenneth Appel, then president of the American Psychiatric Association, proposed at the APA's Mental Hospital Institute in 1953 that "a sociological study of the breakdown crisis in the administration of state mental hospital functions" be undertaken. His model was the famous Flexner Report of 1910, which allegedly had transformed medical education. Within two years a Joint Commission on Mental Illness and Health (JCMIH) had been established. With bipartisan support in Congress, a Mental Health Study Act was passed in mid-1955 endorsing the work of the commission and authorizing the PHS to provide grants. The stage was now set

for a comprehensive long study of the problems posed by mental illnesses as well as possible solutions.

After nearly six years of work and an expenditure of \$3 million, the JCMIH issued its well-known final report, *Action for Mental Health*. The analysis and recommendations in the report were broad rather than technical or narrow, and in many respects mirrored much of the thinking of the postwar years. The document embodied a psychosocial and psychodynamic approach, and stressed the necessity for environmental approaches to the problems of mental health within an integrated community setting. It argued for a diversified program: a much larger investment in basic research; a partnership between psychiatry and nonmedical mental health workers (but with due attention paid to their respective competencies); a national recruitment and training program for those involved in providing services; a greater effort to make services available to "mentally troubled individuals" to forestall more serious breakdowns; intensive treatment of the acute mentally ill in community clinics, general hospitals, and mental hospitals; provisions for aftercare, intermediate care, and rehabilitation services for released patients; and a bold attempt to educate the American public to recognize mental illnesses and to support a national program. The report further demanded that no state hospitals of more than 1,000 beds be built; that no patients be admitted to any existing facility having more than a thousand beds; and that all state hospitals be converted "into centers for the long-term and combined care of chronic diseases, including mental illness." Its fiscal recommendations were equally striking; members asked that expenditures for public mental patient services be doubled in the next five years and tripled in the next ten, and urged an expansion in the fiscal role of the federal government well beyond a commitment to research and training.

Action for Mental Health was a broad document that spelled out a vision for the future rather than a specific legislative program. Its inclusiveness and even vague language offered something to all constituencies, including proponents of institutional as well as a community care. For state government officials the prospect of federal funding was welcome, given the sharp escalations of expenditures for mental health. Between 1945 and 1960 the average per capita expenditure for the maintenance of patients in state mental hospitals had risen from \$386 to \$1,679, and the total expenditures of state institutions went from nearly \$175 million to \$917 million.

A vision, however, differs from a specific legislative program. Those concerned with the mentally ill, therefore, were faced with the difficult task of drawing up some kind of legislative agenda capable of attracting broad support within and outside the Congress. Although there were disagreements about the precise form of such an agenda, they seemed minor alongside the existing consensus that some kind of action was required.

That those committed to new policies turned to the federal government was not surprising. During the 1960s social activists manifested little confidence in state policy making; they had far greater faith in the ability of the federal government to develop new priorities and programs and to provide adequate levels of funding. Their views were by no means idiosyncratic; the prevailing consensus of that decade was that states had failed to meet their social welfare responsibilities. Hence many activists, even though paying homage to the concept of a federal-state partnership, promoted policies that tended to diminish the role and authority of state governments and to forge direct relationships between the federal government and local communities.

Critics of state social policy making received indirect support from NIMH. Most of the key personnel within this agency identified state governments with what they perceived as an obsolete preoccupation with institutional care, and were supportive of policy initiatives that focused on community services and alternatives to mental hospital care. Curiously enough, these critics were seemingly unaware of any consequences that might follow a diminution in state involvement in mental health policies. The position paper prepared by NIMH's Task Force on *Action for Mental Health* was illustrative. Whereas the JCMH had emphasized the *care* of the mentally ill, NIMH preferred instead a policy that focused on "the improvement of the mental health of the people of the country through a continuum of services, not just upon the treatment and rehabilitative aspects of these programs." The document virtually ignored any consequences that might follow a shift in the locus of political authority.

The election of John F. Kennedy in 1960 augured well for the hopes of those dedicated to an expanded role in mental health policy. Kennedy seemed sympathetic, though his basic concern was with mental retardation rather than mental illnesses as such. By the end of 1961 a presidential interagency committee chaired by Secretary of Health, Education and Welfare (HEW), Abraham A. Ribicoff, had been created to develop a coherent program.

From the very outset, it was clear that the proponents of a community-oriented program had the upper hand. Felix (and other like-minded individuals in key positions) played a decisive role in the new developments that followed. Felix's position as director of NIMH enabled him both to set the agenda and to control the flow of information that served as the basis for policy discussions. His NIMH Task Force prepared recommendations for a community-based mental health program for the presidential interagency committee. Its

recommendations made the community mental health center the primary recipient of federal funds, and specifically opposed any program that emphasized institutional care. Indeed, NIMH made the assumption that a comprehensive community mental health program would lead to the disappearance of mental hospitals within a quarter of a century.

Significantly, the presidential interagency committee accepted the recommendations of NIMH, and forwarded them to HEW. Within HEW there were a variety of competing views. Eventually, however, the department rejected the agenda of the JCMIH, which was directed, in part, toward strengthening state systems. HEW, and subsequently President Kennedy, in effect, endorsed the rhetoric of community treatment and supported the creation of new centers whose relationship to traditional mental hospital populations was amorphous. In his message to Congress in February, 1963, Kennedy proposed a new and radical national mental health program. "This approach," he stated, "relies primarily upon the new knowledge and new drugs acquired and developed in recent years which make it possible for most of the mentally ill to be successfully and quickly treated in their own communities and returned to a useful place in society." Such "break-throughs," he added, "have rendered obsolete...prolonged or permanent confinement in huge, unhappy mental hospitals." The focus of the new policy was destined to be the community mental health center. Those with access to the inner councils of the White House and HEW were cognizant of the fact that Kennedy's message was more a rejection than an endorsement of the recommendations of the JCMIH.

That the initiative of the Kennedy Administration departed in some fundamental ways from the recommendations of the JCMIH was either overlooked or ignored. Indeed, Kennedy urged the establishment of *centers*; the JCMIH had spoken about *clinics*. The

differences between the two terms at the time did not appear to be important, but it is clear that the former was far more inclusive and presumed not the strengthening of an existing policy but rather the creation of a new policy. Indeed, the designation of the new entities as "centers" evoked an image of a physical structure, but did not include any discussion of its functions or its relationship to mental hospitals. In Congress rhetoric rather than reality carried the day. The rejection of the traditional policy of institutional care and treatment and its replacement by a new departure was formally confirmed when the act became law in October 1963. The act provided \$150 million to fund the construction of community mental health centers for a three-year period, and required states to submit comprehensive plans for implementing the provisions of the new law.

Thus by the early 1960s the foundations of the longstanding tradition of institutional care had been undermined. Indeed, hospital populations declined rapidly after 1965. A shift in thinking had made community care and treatment, at least in theory, an acceptable alternative to institutionalization. Administrative and structural changes within institutions, including open door policies, informal admissions, and efforts to prepare patients for early release, as well as the introduction of psychotropic drugs, reinforced the belief that treatment could be provided in the community. One of the most significant factors in the decline of hospital populations resulted from the passage of Medicaid and Medicare. This legislation stimulated the growth of chronic nursing homes, and many aged persons formerly cared for in mental hospitals were sent to them. Such a development was welcomed by state officials, since aged persons cared for at state expense in state mental hospitals were now transferred to nursing homes, thus facilitating the transfer of many costs to the national government.

The enthusiasm of the 1960s, however, could not conceal the fact that a coherent policy had yet to be defined. The reduction of the patient population undoubtedly improved the lives of those remaining in state hospitals. Nevertheless, the consequences of postwar innovations in mental health policy were hardly an unmixed blessing. The federal initiative, oddly enough, diminished the role and authority of states by forging a de facto policy that made the community mental health center--not the state hospital--the major component of the mental health system. Indeed, the act of 1963 virtually bypassed the states, and hence gave community mental health centers relative immunity from state supervision. The new program, as a number of state commissioners of mental health pointed out in 1966, was "overly rigid and inflexible, with emphasis on a single national pattern." There was no effort to define the basic function of centers or to develop mechanisms to ensure some measure of integration with a state hospital system that--whatever its shortcomings--traditionally had provided minimum levels of care for the mentally ill.

In ensuing years mentally ill persons previously cared for in mental hospitals were thrust into communities that were unable or unwilling to provide comprehensive care. Community mental health centers, ostensibly established as alternatives to mental hospitals, had, by the 1970s, been transformed into social service agencies offering counselling and intervention for problems of living. Whatever their role and function, it was evident that they had little or no contact with the severely mentally ill. Ironically, in an era when resources for mental health were growing rapidly and psychiatric and psychological services were expanding to include new categories of individuals, the needs of the severely mentally ill were sometimes ignored as other priorities took precedence.

VI

From a constitutional point of view the history of mental health policy offers fascinating insights into the workings of a system of government that divides sovereignty and authority. The fact of the matter is that the American federal system offers rewards (as well as penalties), and thus shapes public policies in unforeseen and indirect ways. During the nineteenth century, state and local governments often came into conflict over the issue of where mentally ill persons would receive care and treatment. As long as fiscal responsibility remained divided, communities attempted to minimize their expenditures by retaining mentally ill persons in almshouses, where costs were below those at state institutions. When states ultimately responded by assuming the total burden, communities not only reduced their almshouse populations, but redefined senility in psychiatric terms and transferred aged persons to state hospitals.

After World War II the arena of conflict shifted as proponents of change, dissatisfied with state policy making, turned to the federal government. Initially, states tended to support new federal initiatives in the hope of reducing their own fiscal responsibilities. By the 1960s, however, new federal policies had begun to bypass state agencies and operate directly on local communities. The erosion of state authority, however, had dramatic consequences; there were few constraints on community mental health centers, many of which were unconcerned with the broad needs of the severely mentally ill. Authority and policy tended to become fragmented and diffused during the 1970s and 1980s, to the detriment of the severely mentally ill. Once again, a federal political structure had affected public policy.

Debates involving mental health policies have, understandably, focused on substance and often ignored the American constitutional framework of government.

Yet structure is a significant component. To so argue is not to imply that the framework of government should be radically altered; *all* government structures, after all, have consequences for policy. It is only to suggest that those who emphasize substance and ignore structure, at least in the American context, may unknowingly promote unpredictable consequences that are not always to their liking.

NOTE

1. The impact of neuroleptic drugs in reducing hospital populations has been greatly exaggerated. For the nation as a whole, the pace of deinstitutionalization in the decade following 1955 was modest; the average annual decline in hospital populations was only 1.5 percent. The greatest decline occurred after 1965. Indeed, drugs had a greater effect on attitudes and hospital practices than it did on psychiatric symptoms. In many institutions drugs created a sense of therapeutic optimism that hastened desirable internal changes. It is also clear that the psychiatric perception of the efficacy of drug therapy was more realistic than public expectations, which were often shaped by the exaggerated claims found in the mass media.

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WOMEN, CHILDREN AND "THE GENERAL WELFARE"

by Lela B. Costin

In this bicentennial year of the signing of the Constitution, it must be remembered that the now famous document designed to protect individual liberties did not acknowledge rights for women and children. The subordinate position of women was firmly embedded in the patriarchal culture of the founding fathers; revolutionary vision did not extend so far as to alter women's status by granting equal rights in the new republic.

Only belatedly and cautiously, beginning in the nineteenth century, did the elected lawmakers use powers which the Constitution had reserved to the states--powers that enabled them, state by state, to provide a measure of rights and protection for women and children. The tenacity of patriarchal thinking and the resistance to women's participation in the governance of the nation are attested to by the long struggle for the right of women to vote. This basic right of citizenship was obtained by constitutional amendment in 1920, well after more than a century of women's struggle for justice.

Given the initial silence of the Constitution on the rights of women and children, it is appropriate to ask how they have fared through the two hundred years of its existence. A partial answer can be found by examining the roles that were assigned to women in the new republic; the origins of patriarchy and its basic belief that biology is the ultimate determinant of women's social and occupational roles; the tight link that has been assigned to the interests of women and children; the inherent conflict between the award of protection and rights; and ways in which these conflicts and

beliefs have been played out in legislative halls, the courts, and the workplace.

WOMEN IN THE ERA OF REVOLUTION

Certain general assumptions prevailed, brought over by the European settlers to the new world: that women were subordinate to and dependent upon family members--fathers, husbands, brothers--and that women's activities were appropriately in the context of the household, to the exclusion of a role in the political community. Nevertheless, for the first several generations of colonial settlement in the seventeenth century, men and women, to some degree, were on equal terms. This equality was not conferred upon women but made necessary by the hardships of daily life. In colonial times, "the exigencies of surviving in the wilderness placed a premium on woman's participation in production, accorded her a central position in economic life, and discouraged any refined notions about her distinctive or feminine temperament." In the small villages where the colonial population was concentrated, women found entrances to political affairs. Politics was played out largely within familiar settings such as circles of families or town meetings where women had a chance to effectively exert influence.¹

Yet when the revolution came, no formal political means existed by which women could be consulted or express their views. They were relied upon, however, for essential war-time tasks--the household manufacture of cloth, sewing blankets for the troops, providing a civilian source of food and shelter for soldiers, a contributor of funds, an organizer of boycotts of British goods, a spy. During long and lonely absences of men who were fighting in the War of Independence or away attending to the business of forging a new government, women not only cared for their children and gave help to other connected families and neighbors; they also applied their mental and physical energies to the formid-

able task of managing and conserving the economic base of an entire household, often with considerable financial acumen. Some were defiant women who believed that women should share in the fruits of the revolution--individual liberties. Abigail Adams was one who didn't hesitate to warn her husband with the declaration: "If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation."²

That women thought about their place in the new republic is attested to by their letters and diaries, petitions to legislatures, court records, pamphlets and books. From her study of these sources, Linda Kerber concluded that for many women the revolution was a strongly politicizing experience, even though "the newly created republic made little room for them as political beings."³ In fact, the new government under the constitution moved women further back from the sources of power, which became more centralized and exercised in a remote public sphere inaccessible to women.

Other factors were at work to restrict women's roles. The colonial pattern of farming for single family subsistence with its simple and interdependent division of labor between the sexes was in decline. The rising industrial economy reduced the perceived worth of work carried out in the home. Women's full time responsibilities for family maintenance became a generally unacknowledged economic product. These factors, along with the constitutional exclusion of women from significant roles in the political arena, left the sex-gender system in "amorphous disarray" with no clear emblem of womanhood.⁴

A PROPER ROLE FOR WOMEN IN THE NEW REPUBLIC

In consequence, men and women both found it imperative to define an acceptable role for women, one that could be generally recognized as a great service to the republic. Kerber defined it thus: "They found what they were seeking in the notion of what might be called 'Republican Motherhood.' The Republican Mother integrated political values into her domestic life. Dedicated as she was to the nurture of public-spirited male citizens she guaranteed the steady infusion of virtue into the republic... The woman now claimed a significant political role, though she played it in the home. This new identity had the advantage of appearing to reconcile politics and domesticity... But the role remained a severely limited one; it had no collective definition, provided no outlet for women to affect a real political decision." Mothers of the republic were still on its edges, in a separate private sphere, segregated from the public arena of men.⁵

Within her domain, however, the role of woman was becoming enhanced and valued in a new way. Around the turn of the eighteenth century and into the nineteenth century, beliefs and popular attitudes toward children began to change substantially. Childhood as a major theme appeared in the writings of Jean Jacques Rousseau, Johann Henrich Pestalozzi, William Blake, and others and was disseminated into America. The strict Calvinist notion of children's innate evil tendencies which must be corrected gave way to a new conception of children--their essential innocence, their naturalness and individuality, the necessity to cherish them and to rear them responsibly, and a new acknowledgement of the value of the child. Romantic and often sentimentalized views of the child became common.

The principal emphasis drawn from the nurture writers, as Bernard Wishy concluded in his study of the child and the republic, was for mothers to now accept

"new and portentous responsibilities." The moral superiority and moral guardianship of women were pervasive themes of the "separate spheres" ideology. The American mother was now expected to take the lead in most matters connected with the child. The reason for this new award of authority to women, as Wishy stated it, "was simple enough: the mother was the obvious source of everything that would save or damn the child; the historical and spiritual destiny of America lay in her hands...the 'new mother's' place was in the home as the most powerful figure in affecting American society. What were 'women's rights' compared with such influence?"⁶

Regardless of the extent to which woman's role as mother was elevated to a higher level of esteem, the new tide of domestic reform placed her under stern pressure to meet society's sex-role expectations. Doing so, however, reinforced traditional attitudes toward women and the public perception of the interests of women and children as synonymous. And significantly, the new authority given to woman as mother was expendable only in her separate sphere.

This separate sphere could only have been maintained with the cooperation of women. That leaves certain questions. Why did women who had played vital roles in the revolution accept this unequal status? Why did they not "foment a rebellion" as Abigail Adams had forecast? When did the fate of women and children become so tightly linked? When and how in the history of human development did female subordination come into existence? Gerda Lerner's study of the creation of patriarchy sheds some light on these questions.⁷

THE ORIGINS OF PATRIARCHY

Lerner began her analysis with the basic assumption that men and women built civilization jointly. Together they struggled up from their helpless dependence on nature. Patriarchy was not the result of one event but a process of over nearly 2,500 years. Lerner places the first sexual division of labor in societies where men carried out the big-game hunting, and women and children the food-gathering, both production for subsistence. She acknowledges that this division of labor derived from biological sex differences. But these differences were not of strength and endurance of men and women, but were reproductive differences, specifically woman's ability to bear children and of necessity to nourish them from her breasts. A woman may have been strong enough to hunt big game, but with a baby in her arms or on her back or hip, big-game hunting was not practical. Mothers who supplied from their own bodies the only source of nourishment for infants held an awesome power over their lives and carried a heavy responsibility in a harsh environment to protect and nurture the children who survived. Helpless infancy fostered a strong mother-child bond. That women performed tasks compatible with child-bearing and child-rearing was a biological necessity. In turn, men who left for long hunting trips needed women's cooperative effort in food gathering and child care. It was an interdependent division of labor essential to the group's survival and acceptable to both men and women.

The development of grain agriculture, however, introduced factors that weakened the generally equal distribution of roles and led to new levels of male dominance. Agriculture was a labor intensive system. It required the work of all group members and group continuity over seasons. The work of children became a newly significant economic asset. Reproducing children was more than ever needed, and heightened the need to acquire more women as reproducers. Lerner maintains that women, and their reproductive product-children--

became the first appropriated property captured in tribal wars or sold for the new accumulation of private property. The creation of private property and the securing of property into the hands of men was a major force in the expansion of male dominance. Thus Lerner concludes that male dominance is a historical phenomenon that arose out of a biologically-determining situation. Over time it became a culturally created and enforced structure. This does not imply that later "separate spheres" and division of labor based on women's mothering are "natural." Sexual attributes are biological; gender is a product of historical process. Lerner sharply distinguishes between the biological necessity to which men and women in the earliest states of human development adapted, and the culturally created customs and institutions which, over time, became deeply entrenched gender constructs. Biological determinism became a prescription for women's roles, and remains so--a political defense of the status quo and a subordinate sex.

EQUALITY IN MARRIAGE

Although the post-revolutionary era in America clearly circumscribed women's authority and power, their times were different from those of colonial women. Strong women who had contributed to the War of Independence and their daughters did not consider themselves to be victims bound together in static submission. Woman's "separate spheres" was after all a way of thinking, not a formally sanctioned structure. A spirit of freedom, better education for women in the nineteenth century, and the efforts of women's rights groups forecast new demands by women to change their unequal status.

Marital Unity and Women's Property

Improvement in marriage laws was a first target for reform. Given the nature of the Constitution, this effort began at the state level. Aided by principles of the revolution that had emphasized freedom from oppressive masters, divorce laws became generally more accessible to women in a number of states. However, the egalitarian ideology stemming from the revolution did not extend to dismantling the practice of coverture, that is, the husband's legal right to take control of his wife's property, manage it, and act independently with respect to it. Without economic power derived from ownership and management of property, a married woman had no independent claim to a political identity of her own. Indeed, she was herself "property." Marriage property laws were part of America's legal heritage from English common law and harked back to Blackstone's concept of "marital unity," a concept that rested upon beliefs in biological determinants of women's capabilities, their consequent disabilities, and their need for protection under the common law. As Blackstone stated it, "Even the disabilities, which the wife lies under, are for the most part intended for her protection and benefit, so great a favorite is the female sex for the laws of England."⁸ Early feminist Sophonisba Breckinridge liked to give an ironic paraphrase of the legal principle of marital unity thus: When the twain became one, the husband was surely that one.⁹

The concept of marital unity did not originate with Blackstone in England. From her study of marriage property laws, Norma Basch characterized marital unity as "an ancient metaphor for marriage," one that had functioned in a variety of historical contexts. Over time, the husband's right to control his wife's property "provided a convenient way of thinking about women as eternally subordinate," which in the face of challenge tended to leave coverture intact. True, some exceptions to coverture were recognized, ones which assertive women could sometimes utilize effectively in

courts of equity. But most women did not fall into special categories addressed in equity, or were not wealthy enough or legally sophisticated, and continued subject to the disabilities and inequalities of being denied the right to own and manage their own property.¹⁰

Because statutes that gave women any degree of property rights re-allocated power within marriage, they were perceived by many as a threat to the patriarchal organization of the family. Consequently, reform of laws with respect to women's property moved at a very slow pace. Not until the middle of the nineteenth century could it be termed a trend. By 1865 some correction had been enacted in twenty-nine states, statutes that were often incomplete or inconsistent.¹¹ Various aspects of inequalities with respect to property rights for women continued well into the first half of the twentieth century.¹² Nevertheless, the gains in women's property rights "constituted a bridge between spheres, a link between the private space of home and family and the public space of politics and the marketplace," a significant step toward demands for suffrage.¹³

Guardianship of Children

Not addressed in reform of women's property rights was another manifestation of the traditional view that women's "disabilities," biologically determined, left them without intellectual and economic capacity to act without male support. This additional inequality before the law, sharply felt by women, denied them guardianship and custody rights to their children. Prior to reform, the father had sole rights to control and custody of his children. During his lifetime he could place his children under the care of someone other than their mother and could do the same by will upon his death. By the nineteenth century, however, old prejudices had begun to falter. Women took advantage of the

prevailing romantic view of mothers and children. Emphasizing qualities that had been accorded them--moral superiority and the role of moral guardianship within the family, they claimed "motherhood" as justification for change in their legal relationship to their children. In the period 1859 to 1874 in most states, women were granted joint rights with the father in guardianship of their children.¹⁴

Reform in guardianship status was more reluctantly accepted than were changes in property rights. Men had not been without self-interest in granting women control over their own property. For example in instances where a daughter's or sister's legacy was at risk of depletion by a spendthrift husband, economic interest supplanted ideology. However, attaching legal rights to motherhood forecast more portentous changes in family life and domestic governance.

THE RISE AND PERSISTENCE OF JUDICIAL PATRIARCHY

Post-revolutionary America experienced a significant expansion of judicial power. From a study of this era, Marylyn Salmon concluded that "the legal profession clung with tenacity to its role as protector of women"¹⁵ rather than the guarantor of equal rights. Michael Grossberg identified what he termed the rise of a judicial patriarchy, reinforced by popular opposition to women's rights. By the late nineteenth century, he claims, "a distinctive American law of custody and guardianship had come to rest on the twin pillars of gender beliefs and judicial patriarchy." Instead of granting powers of guardianship and custody directly and independently to mothers, the courts shifted the locus of patriarchy by usurping the role formerly held by fathers. The judiciary now claimed authority to determine which parent would be granted custody. Judicial patriarchy, Grossberg holds, is the most accurate label for the child placement powers that emerged in the

nineteenth century. Based on the doctrine *parens patriae*, a new standard of child welfare arose, one that considered the child's best interests by determining fault and applying gender-based social values. By introducing the standard of parental fitness, the courts fostered an adversarial relationship between family and courts.¹⁶

Gender and Class Bias

Gender-oriented legal practices such as maternal custody preferences or the "tender-age" conception, appeared to favor women's rights to custody. However, this was true only if the mother conformed to the judge's ideal of womanhood, thus institutionalizing gender ideology. Gender bias was evident, for example, in the attitudes of the court to widows, who were considered to be little qualified to claim legal rights and, more than other women, were perceived as objects of pity, in need of protection, and at risk of requiring community resources.¹⁷ Class biases were added to gender biases, putting poor and immigrant mothers and children at even higher risk of unjustified legal intervention and control.

Gender and class biases persist today in the interactions of the judicial system and the child welfare system, specifically in the way girls are treated in the law enforcement structure. In contrast to boys, girls are more likely to be referred to court, and for less serious offenses. They are routinely referred for sexual misbehavior, are at greater risk of detention, and more likely to be institutionalized than entered into community programs. Once institutionalized, girls are afforded fewer services and learning opportunities than are boys.¹⁸ These differences in treatment by sex have been explained as necessary for girls' protection. In fact, they are long-practiced mechanisms of control that maintain and reinforce expectations of traditional sex roles and male dominance.

The experience of poor and minority children and youth provides another example of gender and class bias in the judicial and child welfare systems of the states. These children are at highest risk of being screened into the juvenile justice system, placed in an institution and kept there for longer periods of time. In addition, their mothers, in an effort to secure needed community services and financial resources, are inevitably subject to the scrutiny of society's agents and evaluation of their maternal fitness.

Child Abuse and Expansion of the Judicial Patriarchy

Contemporary public concern about child abuse, and the passage of mandatory reporting laws has had an unintended consequence--a twentieth century expansion of social control powers and the comingling of the judicial and child welfare systems. It is far from certain that escalated reporting rates represent a true increase in the incidence of child abuse. National statistics for the year 1985 tell us that out of 1,928,000 reported cases, upon investigation 43 percent were founded.¹⁹ It is entirely proper and just that these maltreated children benefit from society's concern and protection. It is also of concern that an unknown number of cases of abuse go unreported, especially among middle- and upper-income families. However, another disquieting question remains with respect to more than half of the cases where abuse is reported, but upon investigation is not confirmed. What residue of exacerbated tensions, anger, and heightened parental insecurity follows involuntary societal intervention into family life? Such an intrusion, however well meant, raises the specter of society's heavy disapproval and the risk of losing one's children. Many of these unsupported allegations are directed towards poor women, or parents whose cultural patterns are neither understood or accepted, as well as others who lack support from relatives or friends and are marginal in child care. Basic social services,

voluntarily offered and used, in many such instances could improve child care and reinforce family autonomy. However, such services are not generally available.

The gap between the number of child abuse cases reported and the lack of prompt and intensive services offered reflects conditions not easily modified. Significantly, increasing numbers of reports leave child protection workers hard pressed to do more than process reports. In addition, most agencies have not developed explicit and reliable criteria for making decisions as to which families can safely care for their children. Troubling confusion as to the nature of an effective division of responsibilities between the court and the protective agency results in the too hasty removal of children from home into foster care, or the unjustified return of children to abusive parents.

Despite the considerable literature reflecting systematic study of child abuse, it remains a complex, multi-dimensional and only partially understood phenomenon. How to protect children without encroaching upon parental rights is far from clear.

RIGHTS AND PROTECTION

The concept of legal rights for children is a more nebulous one than rights for women. An understanding of children's rights has been obscured by confusion about the meaning of the term. "In its practical application 'children's rights' has traditionally meant a claim to special protections under the law, rather than to more broadly construed civil or political liberties."²⁰ And indeed, children by all counts are dependent on adults, immature in some aspects even as they grow and learn, needing guidance and supervision, needing protection. A long-standing belief in this society is that protection of children should come from parents, a belief that remains at the center of debate about rights for children.

The idea of rights for children, in contrast to protection, has been slow to develop. In 1852, in an article entitled "The Rights of Children" appeared in a New England periodical, but the appeal was chiefly for protection of children against parental "tyranny," rather than for child rights independent of parents.²¹ Eldridge Gerry, the late nineteenth leader of the New York Society for the Prevention of Cruelty to Children, in 1882 couched the intent of his organization in the language of rights for children by emphasizing the axiom that "at the present day in this country, children have *some* rights which even parents are bound to respect."²² In fact, the anti-cruelty movement which he led relied primarily upon coercive reform aimed chiefly at lower class immigrant parents. The remedy for alleged cruelty was stern punishment of the offending parents and protection of their children by confinement in an institution, usually for the rest of their growing up years, a poignant illustration of the injustice of ill-placed programs of protection upon "different" social classes of children and parents.

Legal Recognition of Child Rights

The matter of child rights was long delayed. Beginning in the decade of the 1960s, the courts began to address the question of rights for minors independent of their parents. Examples of the issues that have reached the Supreme Court and been ruled upon are the rights of juveniles in delinquency actions and in schools; the minor's right to control her own reproductive capacities by access to contraception or abortion; and the right of the non-marital child to financial support from her or his father.²³ So far, Supreme Court decisions dealing with child rights versus those of their parents or guardians have tended to reflect an inconsistent line of reasoning. Hilary Rodham has identified two persistent problems of legal theory relative to children's rights: An ambivalence about placing limits on parental control, and failure on the part of the state to take into account

the interests of children and to give competent children a chance to speak for themselves.²⁴

Basic to the idea of child rights is the necessity to recognize the child as a "person" under the law. Although progress toward individual rights for children has been uneven, as Martha Minow has observed, the movement is particularly significant in that it represents "the initiation of a direct relationship between children and the state, unfiltered by parental involvement but maintaining children's special status as people deserving protection from others and from themselves."²⁵

Child Labor and the Hazards of Protection

Strategies developed from time to time by society for the protection of a specified group of individuals against a condition deemed harmful to them has proved to be a double-edged experience. Defining a group of individuals to be protected necessarily means classifying individuals into categories of persons with common characteristics and perceived needs. By its very nature, however, classification results in disregard for the needs and capacities of particular persons within the protected group, and inevitably has a constraining influence upon consideration of their rights.

The child labor movement of the late nineteenth and early twentieth century illustrated critical issues in attempts to attend to the protection of children. The intent of reformers was to end industrial wrongs to children, improve social conditions, and assure children's public education. Proponents were interested, not in intervention into individual family situations, but in the larger social system. The goal was structural reform--political, and secular, based on empirical data. The remedy was legislation to regulate attendance at school. The movement attracted settlement house residents, constitutional lawyers, prominent women reformers of

the progressive era, and other politically-minded social activists.

Throughout American history, persistent questions have been raised about the meaning and importance of work in the development of children. Beliefs and issues have changed over time. In colonial days parents and society accepted a duty to teach children habits of work at an early age. This was considered a necessary discipline which would stand children in good stead in the face of natural slothful inclinations and would prepare them for the demands of a hard life. "Binding out," or indenturing poor children to a master workman was common. As industry expanded and became mechanized in the nineteenth century, public duty included putting children into industrial work that would not only keep them from idleness, but would also be profitable to the towns and colonies.²⁶ As industry's profits grew, parents, by virtue of their long-established right to control of their children, assumed a right to the earnings of their children's labors. Many poor parents depended upon their children's wages to maintain the family, a condition that was cited to justify opposition to child labor regulation.

The tide of moral indignation that arose in the face of documented industrial exploitation and harsh abuse of children in the mills, factories, and mines, coupled with a new concern about a growing illiterate and uneducated class of children whose waking hours were spent at work, prompted the beginning of a long and bitter reform effort to protect children from the evils of premature employment. Opposition to reform reflected divided public opinion, complex and competing interests of employers, and parents' fears of losing autonomy in the family as well as their children's earnings. However, other adult interests were at stake: child labor depressed adult wages and could not be unionized. Gradually, state by state and industry by industry, most children were removed from unregulated work and came under the jurisdiction of compulsory

education laws. The federal Fair Labor Standards Act of 1938 included provisions for the regulation of child labor.

Although some industries and child workers were exempt from regulation, child labor reformers succeeded in protecting children from the worst of the widespread and shocking exploitation of children in industry, an achievement of great humanitarian value. Some reformers believed, however, that child labor regulation, in and of itself, was a partial victory in the larger meaning of child welfare. They cited the difference between "child labor" and "children's work." Substitutes for child labor were needed, they said, not only suitable schooling and wholesome play, but opportunities for suitable work--useful work--as an aspect of their preparation for an eventual entrance into the labor market.²⁷ Vocational education in the schools was tried but the results were disappointing. Technology in industry was changing rapidly. Students found themselves learning on outworn machines, from outdated methods of instruction, trying to enter the market with obsolete skills.

Today it is even harder for children and young adolescents to learn work habits and to have confidence-building work experiences. For many thousands of youth sixteen to twenty-one years of age, particularly in the central cities, schooling has been a defeating experience. They are effectively blocked from the labor market and independence in the mainstream of society. Job hunting is a depressing and frustrating venture which pushes youth further from accomplishment and increases apathy and despair. How to institutionalize occupational socialization during childhood and growth-producing work experiences during adolescence, and at the same time create a viable entrance into the labor market for all segments of our youth, is one of the most serious problems of this century.

The question of rights versus protection for children and youth remains a perplexing one. Protective

legislation springs from benevolence combined with other diverse motives. The hazard of protective legislation is that it creates an "aura of nurturance that often masks the inherent conflict between protection extended to the vulnerable and the privileges of citizenship."²⁹ The award of legal rights to minors, and the efforts of parents and the state to protect them, creates dilemmas. We are left with a complex problem--the need to find a just and flexible balance in the changing needs and rights of parents, child, and state.

Protection vs. Rights for Women

Legislation for working women in the twentieth century is perhaps a better illustration of the contradictions between benefits and losses, protection and rights, that accrue to a protected group. An embittered conflict in the 1920s among feminists over protective legislation versus equal rights split the coalition of women who had stood together in the fight for suffrage.

Between 1900 and 1920, through the efforts of reformers, most of the states passed statutes with varying restrictions on women's work--the maximum hours women could work, prohibition of night work, and other restrictions of varying kinds in industries regarded as dangerous to women's health, welfare, morals, or capacity for motherhood. Advancing women in industry had been an important goal of the feminist movement. Differences existed, however, as to what were appropriate strategies to pursue.

Male labor unionists were little interested in organizing women into the movement, prompting feminists to turn to protective legislation. Passage of protective legislation among the states was regarded as a clear victory by social feminists who, along with the few trade union women, had witnessed the oppressive conditions in which working class women labored for long, exhausting hours. These reformers perceived poor and

immigrant working women as in need of protection--not because they were personally inadequate and helpless, but because they had come into an inferior social, economic and political status upon their arrival in this country and were coping with enormous change in their lives. Most were poorly educated, desperate for work, and easily exploited. Proponents of the legislation considered it a triumph for a large and highly vulnerable segment of working women.

Support for the new legislation came from Jane Addams of Hull-House; Lillian Wald of Henry Street Settlement; Alice Hamilton, a physician who had documented the disastrous effect upon the health of women and men in the "dangerous trades;" Florence Kelley of the National Consumers League; Julia Lathrop of the Children's Bureau; Grace Abbott of the Chicago Immigrants Protective League; social investigators Sophonisba Breckinridge, Edith Abbott, Mary McDowell, and Josephine Goldmark, all of whom provided authoritative facts of the conditions of women workers--all these and more.

However, in the 1920s a small, more radical, and highly vocal group of feminists, under the aegis of the National Women's Party, (NWP) challenged the concept of protection and abandoned it in favor of efforts to secure an equal rights constitutional amendment. The NWP attracted competent highly motivated, successful, middle-class business and professional women. Alice Paul was the acknowledged dynamic leader, and Mrs. Alva Belmont the financial "angel" of the NWP. Others who were attracted to the movement for equal rights included such diverse individuals as Edna St. Vincent Millay; Gloria Swanson; Amelia Earhart; Mrs. John T. Raskob, wife of the president of General Motors; M. Carey Thomas, president of Bryn Mawr College; Gail Laughlin, first president of the National Federation of Business and Professional Women's Clubs; and others of similar social or professional status.³⁰ By the early

1920s the differences between the equal rights proponents were irreconcilable.

Social feminists who defended protective legislation had worked for suffrage as a matter of justice, but also they wanted the vote as a means of influencing the evolution of society--for "the good they could do with it."³¹ The more militant advocates had based their appeal for suffrage on the issue of justice alone. An equal rights amendment, in their view, was the next step after suffrage, based upon the same principle that had justified the vote for women--women as individual human beings, rather than persons treated collectively, without recognition of their individual interests and capabilities. They emphasized that placing women in a special group requiring protection only diminished their claim to rights and reinforced the notion of a biological determination of women's roles. They held that protective legislation had confined women to low-paying and over-crowded jobs. An equal rights amendment would give women in the labor force the same opportunities as men were given so that "vigorous and highly skilled women could no longer be required to 'set their pace with the weakest of their sex'."³²

Social feminists acknowledged that protection for working women might not be in the best interests of particular women, but insisted that an equal rights amendment would necessarily promote the interests of an upper class against a lower class of women whose problem was exploitation, not exclusion. An equal rights amendment would nullify all the protective legislation they had struggled so hard to attain, and they were outraged.

The suggestion of an equal rights amendment for women never received serious consideration among lawmakers. The social, economic, and political climate was against it, not modified by the disruptive and often strident tactics of the National Women's Party, far ahead of its time. However, by the end of the 1920s and the

early 1930s, support for protectionist sentiments gradually weakened by a growing commitment to labor reform for both men and women, finally reflected in the Fair Labor Standards Act of 1938.

In the years following, most of the protective legislation that social feminists had won during the first three decades of the twentieth century was dismantled. New awareness and new actions among feminist groups, and step-by-step legal decisions confirming equality of opportunity between the sexes, were having a far reaching impact. As Carl Degler summed it up, "The old battle between the militants of Alice Paul's National Women's Party and the social feminists and suffragists of the 1920s has been resolved decisively in favor of the militants."³³

However, one cannot dismiss the effort of the late nineteenth and early twentieth century social feminist reformers. These women were keenly aware of the burdens that low-income women carried and their sense of social responsibility led them to be advocates of these oppressed women. Faced with formidable obstacles, they used their own life experiences and their keen intellect to alleviate hardships of women at work. In the early part of the century, feminist ideology had not evolved to its present-day level of complexity and richness. The basic contradiction between protective legislation and feminist ideology was not so readily discerned. Their efforts must be judged in light of the times in which they lived and worked.

ADVANCES AND UNRESOLVED ISSUES FOR WOMEN AND CHILDREN

Today many of the basic issues in women's equality that the modern women's movement faced have largely been resolved; for example, entry into professional and scientific education programs, into government jobs, and political candidacy. Despite the

fact that women receive 68 percent of the average wage earned by men, progress is being made as well in the "equal pay for equal worth" issue with more than half of the states beginning to analyze government jobs to insure that those filled mainly by women are not unfairly undervalued in pay scales. Women are more frequently found in positions of leadership, and this is less frequently seen as unusual. More women subscribe to and take for granted the aims and principles of the organized women's movement, even as they deal individually with the unfinished tasks of confirming equality at home and in the workplace, and with newer "women's issues" such as the father's role in child-rearing after divorce.³⁴

A baffling issue is the continuing inability of the organized women's movement to gain ratification of an equal rights amendment to the Constitution. In this late twentieth century, women alone do not bear the responsibility to assure their equal rights. It is a clear matter of justice for all, too long delayed. It is not important that now after hard-won legal contests for women's rights, the amendment would be mainly symbolic. Symbols are of great importance and are being venerated throughout the country in this bicentennial year of the Constitution. Another such refusal of legislators to confirm the rights of women could only be viewed as an anachronistic grudge, not a considered decision with respect to justice.

At the center of the rejection of a formal endorsement of equal rights for women is the tenacity, despite sweeping change, with which many citizens hold to an emotional and nostalgic view of what the structure of the family should be and the roles that men and women should play in it. Throughout the history of America, unyielding fear of change in the traditional concept of the family has been inherent in every organized opposition to rights for women. Yet neither the state nor the economy have ever supported the somewhat romantic traditional concept of the family,

except for a brief time for a select group. To quote a contemporary feminist, "When over fifty percent of all married women with young children are in the labor force, it's time to stop blaming the feminists for destroying the family. Whatever personal satisfactions these women may find at work, the cold hard fact of American family life today is that it takes two incomes to live decently and still pay the bills."³⁵

Most women who work do so out of necessity of one kind or another, and although the pattern is changing, they still bear most of the responsibility for housework and child care. In a study of the employment of women over time, Lynn Weiner identified two persistent themes: the problem of day care for young children, and the question of structural change in the work place.³⁶ Since women first entered into industrial work more than a century ago, the way in which work is organized has been a "stress factor" in family life. In this highly competitive urban age, family life will require a reorganization of the world of work--not only at home, but also shorter work weeks for both men and women; provisions for maternal and paternal leave when children are born, or are ill and need a parent's care; and the provision of affordable, flexible child care programs during parents' working hours. The benefits of pre-school programs have been demonstrated in recent studies of high quality Head Start programs. The technology of curriculum for the development of a child's intelligence is established, and if combined with a nurturing interest in young children, does not disrupt their emotional bonds with their parents. It is an international embarrassment that this country lags far behind all other industrial countries of the world in assuming responsibility for child care facilities for working parents.

There are far greater threats in our society to the stability of the family than working women and their changing roles. One is the increased proportion of poor women and children, "the feminization of poverty."

There is a fundamental relationship between family income security and child welfare. For many of these children and their mothers, there seems to be no escape from the harsh effects of life lived in poverty.

The proportion of children living in female-headed families has more than doubled in the past twenty-five years. One of every six white children and slightly more than one of every two black children live in mother-only families. Almost half of all female-headed families live in extreme poverty.³⁷ Facts are ominous with respect to the health and welfare of poor women and children.

Children in poor families lack proper medical care. Among poor preschoolers, between 34 and 45 percent are not adequately immunized against serious but preventable diseases, for example measles or diphtheria. Furthermore, almost one in four American babies is born with its mother having had no prenatal care in the early stages of pregnancy.³⁸ Despite medical advances, infant mortality rates in impoverished areas of our major cities are almost double the national average of 10.8 infants per 1,000 live births. Poverty, ignorance, and lack of access to proper care contribute to this state of affairs.³⁹

For some poor women, the Women-Infant-Children program (WIC) provides prenatal care and diet supplements. A report from the Federal Center for Disease Control concludes that the rate of anemia among poor children in WIC programs decreased almost two-thirds from 1975 to 1985. Another study, a five-year evaluation by the Department of Agriculture, showed that WIC programs of appropriate quality reduce fetal and early infant deaths and help to insure normal birth weight. Infants of below normal birth weight require intensive care, and frequently have to be re-hospitalized during the first year of life. Some are born with handicaps that require costly continuing medical care. It is tragic that limited financing restricts the WIC

program to barely half of those eligible.⁴⁰ If regard for human life is not a sufficient reason to provide health care for poor families, policy makers might consider the value of sound investment principles and the cost-effectiveness of prevention.

Lack of child-support payments by fathers contributes to the feminization of poverty. A majority of single mothers receive no financial help at all from fathers. Many states have been dilatory about fully implementing legislation passed by Congress in 1984 to remedy child support enforcement. By the end of 1986, only twenty-six states had put into effect a key provision: withholding wages of non-paying absent parents. Children born outside of marriage are most unlikely to obtain paternal support; only 4 percent of their mothers receive payments. Establishing paternity is the first step toward payment.⁴¹ Many of these fathers are presently unemployed and unable to pay child support or can do so only at low levels and irregularly. Nevertheless, possible future financial benefits accruing to children from their father's work record, military service, or other unforeseen sources provide a significant reason for a policy that requires a record of a child's paternity. Not to be ignored is a child's future interest in knowing about his or her paternal linkage.

Homelessness has become another serious threat to the status of the family. More than 20 percent of the population in shelters for the homeless are children. Many other poor families live dangerously close to homelessness, not only because they are poor, but because of the cuts in construction of low-income housing and reduced federal help. Homelessness, the Children's Defense Fund reminds us, can devastate families.⁴²

Hundreds of thousands of teenagers are now homeless, according to the National Network of Run-away and Youth Services. Many are estranged from their own families, but at least a third report that they have no home at all to which they can return. Some of

them are pregnant or already parents.⁴³ They face formidable barriers to receiving the wide range of help that they need. Some are "aging out" of foster care and are unprepared to make the transition to independent living. Many of these alienated youth will become our disadvantaged parents of the future.

Poor families, lack of health care, unemployment, homelessness, and lack of marketable skills add up to an unjustifiable waste of lives and money. In this 200th year of the Constitution, we should be able to do better. At different stages of our history, examples can be cited of innovative and effective programs of public health, education, and work productivity for which the federal government and the states have appropriated money in order to promote "the general welfare." To obtain new programs will require advocacy for diverse family forms and tested programs that are both preventive and cost effective.

Change is inherent in the vital society that was envisioned in the Constitution. Fuller attention to the nurturance, health, education, and work opportunities of our children and youth can substantially reduce fears for the future.

NOTES

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THE CONSTITUTION AND WELFARE POLICY: SOME PHILOSOPHICAL REFLECTIONS

by H.E. Mason

Reflection on the role of the Constitution in the development of public welfare policies and its promise for the resolution of current problems is bound to raise a number of serious and difficult questions. The Constitution serves the American system of government in a variety of ways. It is a symbol of the unity of the republic, setting forth its fundamental goals; it defines the federal system, specifying the respective powers, and thereby establishing a framework within which specific problems are to be addressed; and it serves as a kind of last court of appeal for recalcitrant questions of justice. The Constitution is an historical document, framed at a particular time in history and clearly marked by that time, but it has a continuing role in times that are, in many ways, very different. Many of the problems calling for public welfare policies could not have occurred at the time of the framing of the Constitution, others would have beyond conception by the framers. Conditions of social life have changed in very fundamental ways, as have ways of conceiving of the problems of social life. Conceptions of illness and health, of work and leisure, of race, class, and gender have all changed, and attendant upon those changes have come both new problems and new perceptions of old problems.

In the course of these lectures several of the participants argued that the Constitution is silent about questions of public welfare. That may be true, but it is misleading. The critical question is not whether matters of welfare policy are explicitly mentioned in the Constitution, but whether the Constitution provides resources for addressing those questions of justice specifically involving welfare policies in one way or another. What resources the Constitution does provide must, moreover,

be understood in terms of a view of constitutional interpretation that recognizes both the historicity and the continuing role of the Constitution in our political life. If the Constitution is to continue to serve as a last court of appeal for recalcitrant questions of justice, its language must be interpreted in a way which continues to earn the trust of those who turn to the courts in the expectation that justice will be done. That doubtless entails taking a very broad view of what the language of the framers and of courts will allow, but if the Constitution is to continue to serve in radically changed historical circumstances, nothing less will do.

There is another feature of problems of public policy which complicates any consideration of the particular role of the Constitution to the solution of social problems. Some of its language may tempt a citizen to find there a mandate for public action in relief of pressing human problems, but the history recounted in this series of lectures shows the role of the Constitution to be both more indirect and more complex. Particular policies and programs tend to be instituted in response to relatively specific problems and needs, often serving purposes that are ambiguous at best. Arguments in favor of specific welfare programs tend to be local and specific, not general. Rather than proceeding from general principles or ideals, they tend to be directed toward particular problems and needs, and particular groups of people. It is common for activists and reformers to describe the plight of people in one circumstance or another, exhibiting the need for a particular program. Such arguments may appeal to the sympathy and concern and sense of fairness of the public, but they can only be thought to appeal very indirectly to the general welfare of the people or of the nation at large. The Constitution may provide a kind of framework within the context of which specific problems can be addressed, but, political rhetoric aside, it rarely, if ever, serves as a primary determining factor. The Constitution may permit or forbid particular social programs, but it can rarely be said to require them.

The particularity and relative independence of specific social welfare programs are further complicated by their ambiguous motivation. As Professor Katz observed, such programs are often introduced in the face of pressure in times of social crisis, serving social control as much as the ostensible needs in question, and the particular course of their development may be more a matter of accidental political factors than rational social planning. Once established, programs come to have a life of their own, developing their own institutional momentum, with attendant problems and needs, and they engender both hostile and favorable responses. The course of development is, in Professor Katz's phrase, dialectical. The result is a patchwork at best, and judgments of its justice are bound to be fragile.

There is a form of argument encouraged by the Constitution that is especially appropriate to institutional patchworks. That is the appeal for equal protection. Where one citizen receives as a matter of course a form of public aid, then, other things being equal, citizens similarly situated are commonly supposed to be entitled to the same public aid. If the county plows your roads, then, other things being equal, I have the right to expect the county to plow my roads; if your water is tested by the state, I have a right to have my water tested as well. The principle in question is well known and commonly acknowledged. It is commonly invoked in demanding the extension of social services from one class of citizens to another, and while it is not always honored, it is difficult to ignore. Not all differences of treatment are reasonable candidates for remedy under the equal protection clause of the Constitution. But the question raised in this series of lectures is whether the language of that constitutional provision can be reasonably refused application to some of the deep and continuing inequities of treatment cited in the lectures.

In the course of this series of lectures an unhappily large number of deep and continuing inequities of

treatment have been mentioned: one-fourth of the children under six in this country live in families below the poverty level, and tend to receive less than the minimum daily nutritional level for children of their age; a substantial proportion of the families below poverty line are single-parent families headed by females; as many as thirty-seven million people in the country are without medical insurance; a substantial proportion and a disproportionate number of young black males are unemployed. Unfortunately, if predictably, the public perception of these inequities is beclouded by myths. The facts go unrecognized, or the causes are attributed to indolence and incapacity, or to personal vice or irresponsibility. The circumstances of the middle class, on the other hand, are euphemistically described; many of the causes of their more fortunate position left unacknowledged. It is commonly thought, for example, that corporate health plans are financed by private contributions, and the actual contribution of both the government and consumers in the form of tax write-offs and consumer costs go unacknowledged. Or, to take another example, there is little recognition that a homeowner's interest deduction is no less a transfer of income than proposals for a negative income tax. At a deeper level, resistance stems from deep and continuing hostility to people and groups perceived to be undeserving.

In these and a great many comparable and commonly recognized ways, inequities of treatment and deep and continuing problems go unaddressed and come to seem recalcitrant and impossible of resolution. Where the inequity is both genuine and continuing, and the affected classes can be plausibly defined and feasible remedies specified, it is reasonable to expect equal protection from the courts. What explicit promise the Constitution holds for the relief of continuing problems of social welfare almost certainly lies in that direction. If provision for equality of educational opportunity can be brought within the domain of the courts, it is, for example, only reasonable to expect fundamental condi-

tions of the intellectual and personal development of the very young to be a matter of judicial concern. But given hostile or unreceptive courts, the contribution of the Constitution can be at best much more indirect, defining a structure within which solutions can be sought through legislation. The accommodating role of the Constitution, allowing interrelated initiatives at the private, state and federal levels, is nicely illustrated in Professor Grob's account of the development of policies concerning mental health. It must be said, moreover, that as political action takes the place of appeal to the courts, the range of possible considerations is broadened immeasurably. Within the political realm it is at least possible for both prudence and human concern to join with a concern for justice in the face of human problems. Consider the resentment of the working poor toward those unemployed people who are eligible for government-financed medical care denied them because of their employment. In the political consideration of that issue, a prudent concern that the working poor continue to seek employment can be conjoined with judgments of manifest unfairness of their treatment.

Considering the indirect, and, in a way, receding role of the Constitution in the development of social welfare policy, it is not surprising that the Constitution should have received relatively little mention in the course of these lectures. The problems have been, and doubtless will continue to be, primarily political. The more difficult questions concern the possibility of a public consciousness concerned over deep and continuing inequities, and ready to sustain the effort to address them. As the public response to the *Roe v. Wade* decision has shown, that is particularly true where common attitudes and established institutions are threatened. If, as Professor Costin suggests, some of the deepest and most serious problems are structural in nature, it seem highly unlikely that they will be addressed without a renewed sense of public concern and responsibility. Whether such problems can be addressed within the Constitutional framework is the most difficult question posed by this series of lectures.

EPILOGUE

The papers prepared for the bicentennial forum celebrating the 200th birthday of the Constitution were delivered at a time of intense debate. Thurgood Marshall, the only black associate justice on the U.S. Supreme Court, declared that the Constitution was defective from the start, noting the absence of a moral principle denouncing slavery and the subjugation of women. Spokespersons for the Reagan Administration seized the unfolding debate to assert the concept of "original intent" and introduced the notion of "the new federalism" looking toward a literal interpretation of the constitution to shift responsibilities to state and local governments. At the same time, powerful arguments for a dynamic view of the Constitution were put forth by judicial figures such as William J. Brennan, Jr., an associate justice of the U.S. Supreme Court. He observed that while the Constitution, and particularly the Bill of Rights, declares certain values to be immutable, the genius of the document is the adaptability of its principles to current problems and current needs. In the words of Justice Brennan, "Recognition of so-called 'new property' rights in those receiving government entitlements affirms the essential dignity of the least fortunate among us by demanding that government treat with decency, integrity, and consistency those dependent on its benefits for their very survival. After all, a legislative majority initially decides to create governmental entitlements; the Constitution's due process clause merely provides protection for entitlements thought necessary by society as a whole. Such due process rights prohibit government from imposing the devil's bargain of bartering away human dignity in exchange for human sustenance..."¹ In this view, the constitutional vision of human dignity requires the words of the text to be interpreted for a meaning in our time.

Each of the presented papers noted that one of the most fundamental issues in constitutional history has been the definition of the powers of federal, state, and local government. The role of the federal government to intervene on behalf of the welfare of the nation's citizens was severely limited for almost 150 years, except in rare instances (the Sheppard-Towner Act authorizing federal grants to the states for maternal and infant health care and several disaster relief programs for earthquake, flood and drought victims). The harsh inequalities of economic and social life visited upon vulnerable populations of the poor, the mentally ill, and women and children appeared to be immune from constitutional challenge for a significant portion of the nation's history.

Indeed, the use of the Constitution to achieve economic and social justice is a relatively recent phenomenon. The crucial tests came just over fifty years ago when New Deal initiatives to remedy the catastrophic economic problems of the Great Depression were challenged as unconstitutional. Among the judicial challenges to various parts of the Social Security Act, the decision upholding the old-age insurance program is instructive. Using the taxing power of Congress as the constitutional legitimacy for provision for the elderly, the Court adopted the position that old-age benefits would promote the general welfare of the nation. Justice Cardozo's opinion is generally regarded as representing a significant constitutional development in establishing broad congressional powers to tax and spend for the general welfare.²

The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.

Congress did not improvise a judgment when it found that the award of old age

benefits would be conducive to the general welfare... A great mass of evidence was brought together supporting the policy which finds expression in the act... More and more our population is becoming urban and industrial instead of rural and agricultural. The evidence is impressive that among industrial workers the younger men and women are preferred over the older. In times of retrenchment the older are commonly the first to go, and even if retained, their wages are likely to be lowered.

The plight of men and women at so low an age as 40 is hard, almost hopeless, when they are driven to seek for reemployment... With the loss of savings inevitable in periods of idleness, the fate of workers over 65, when thrown out of work, is little less than desperate...

The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief... Only a power that is national can serve the interest of all.

In this light, tracing the transformation of the federal government from silence into an active partner on behalf of the vulnerable populations of the poor, the mentally ill, and women and children becomes the unifying theme of the three papers presented here.

Michael Katz, in his paper "Poverty and Public Policy," illuminates our ambivalent response to poverty that remains persistently characterized by an intricate mixture of altruism, hostility, and neglect. As we see in the various phases of the welfare debate, reform is almost always followed by denunciations and charges of

failure. Ideological differences on what level of government should bear the burden of support pervade the arguments.

Katz reminds us that the search for the causes of poverty stretches back into the beginning of our history as a nation. He reveals to us how persistently we have located the source of poverty in character flaws rather than in external circumstances dealing with the structures of the labor market, the institution of education and its access, the social class structure, and the factor of racial discrimination. We have always had a tendency to search for causes in personal behaviors, such as alcohol abuse, laziness, and sexual behavior. It is this perception which easily translates into a justification of mean and punitive policies.

Katz notes that the moral definition of poverty has been deeply embedded in Western culture, which has fervently embraced the concept of deserving and undeserving poor. Invidious distinctions among categories of dependent people have persisted throughout time.

He strikes a warning note. We now have almost resigned ourselves to a classification of poor known as "the underclass," a definition of poor people whose behaviors and values transform their poverty into an enclosed and self-perpetuating world of dependence. He notes that this has brought a mixture of alarm and hostility. He rightfully asks whether this classification is a justification for quarantining the poor with the label "undeserving."

It is historians such as Michael Katz who disclose to us that the most ancient and enduring fear we have about poverty is our fear of dependency and the belief that welfare might erode the will to work. Perhaps that is why the pariahs among the poor have always been unemployed men. More recently, however, it is mothers of young children who have lost their place as the deserving poor.

In a sharp conclusion, Katz notes that rarely have we seen a shift in the status or sentiment accorded to the poor. Rather, demographics and politics based on ideas about the poor, the economy, and the responsible level of government have intertwined to shape responses.

Turning to the second paper, "Mental Illness and American Society," Professor Gerald Grob reiterates the significance of the definition of the powers of federal, state and local government. The diverse ways in which the American people have responded to mental illness is mirrored in the story of the contending interests of three levels of government in provision of resources and standards of treatment. The late entrance of the federal government as an active partner is noted by the fact that the National Institute of Mental Health is not quite forty years old.

The founding of state mental hospitals (by the Civil War each state had one) along with the development of local almshouses which also cared for the mentally ill revealed the contentious overlapping governmental jurisdictions and wide variations in the treatment of the mentally ill that characterized early history and continues even today. Grob traces historical developments in a way that reveals the pivotal importance of knowing the distinctive American framework of government. This leads to a compelling need to understand the politics of assigning the level of government that is to be responsible and the fiscal arrangements associated with these policy decisions.

A number of different developments converged to produce the "deinstitutionalization" era of the 1970s. This movement emphasized a "community treatment" strategy which indirectly attacked the legitimacy of state hospitals. It is Grob's contention that the transformation of the federal government as an active partner in the mental health field is the decisive factor in the movement away from state institutional care to a local community-based mental health system. Grob's

history of the shift in thinking from institutional care to community care and treatment is instructive. Changes in the character of the patient population were occurring with a rising proportion of aged patients. At the same time, the unyielding size of chronically ill patients for whom no therapeutic intervention was available (cerebral arteriosclerosis and Huntington's Chorea, for example) produced high costs for state institutions. The introduction of psychotropic drugs reinforced the belief that treatment could be provided in the community. But again, Grob returns to his theme that the critical factor in the continuing obsolescence of the state institutions was a political decision that reassigned responsibilities for the care of the mentally ill to a local level of government. The passage of Medicaid and Medicare legislation stimulated the growth of nursing homes for the long term care of the aged, thus facilitating the transfer of costs from the state to the national government. A "mental health" system was created and the local community mental health center became its linchpin. Because the role and function of the community mental health center had little to do with the care of the severely and chronically mentally ill, an unintended consequence was the fact that this population slipped out of focus. With the phasing out of state institutions and alternative community facilities developing at an excruciatingly slow rate, the chronically mentally ill as a general population have been neglected.

Grob's history of mental health policy gives us troubling insights into the workings of a constitutional system that divides authority among different levels of government.

Finally, Professor Lela Costin in her paper, "The Welfare of Families and Children," also refers to the silence of the Constitution on the rights of a vulnerable population. In tracing the 200 year struggle to obtain social justice and equality for women, Professor Costin provides vivid details on the tenacity of patriarchal thinking which was firmly embedded in the culture of

the founding fathers and changed only at a painfully slow pace thereafter.

Professor Costin's account of the intertwined history of property, the family, marriage, and guardianship of children reveals the gender and social class bias that was intricately woven through state statutes. The exploitation of children as exposed in the child labor movement, the hard-fought battle to obtain the basic right of citizenship for women, and the right to vote disclose the struggle to eliminate injustices that stemmed from the original silence of the Constitution.

A poignant note is recorded by Professor Costin in the divisive fight over protective legislation for working women which split the ranks of women social reformers. The struggle between proponents of an equal rights amendment and those who felt that such an amendment would nullify protective legislation which was in the interest of poor working women remained irreconcilable. Almost eighty years later one is struck with the profound irony that women have not gained an equal rights amendment, nor have they achieved equality in the work place.

The history of the welfare of women and children is a powerful reminder that the Constitution was structured by and for the gender relationship of the eighteenth century. The limitations of women's role in society was rooted in premises of a deeply ingrained ideology that consigned women to the private sphere of domesticity and men to the public sphere of power and politics.

These original premises, firmly rooted in the "separate spheres" ideology were seized, until very recently, as the rationale for reinforcing the legal, social and economic inequalities between men and women.

The task for the future, as Lela Costin asserted, is to push ahead for full constitutional protection to

ensure equality and autonomy to guarantee that women stand, without a trace of discrimination, as decision-makers and agents of their own destiny.

In these papers, we have been shown a society which frequently raises challenges to the concept of a federal authority committed to promoting "the general welfare." In times of severe economic dislocations with catastrophic events of AIDS, homelessness, and the deteriorating economic status of segments of the population, thorny issues of balancing federal, state, and local responsibilities are especially acute.

Clearly, the nation is still divided on a troublesome set of issues. The political acceptance of finite resources for social welfare poses a serious question: How do we distribute social welfare assistance among vulnerable groups of people in a framework of social responsibility? And the lingering question remains: What level of government should be responsible for moving the nation's unfinished business to provide equality and social justice for all its citizens?

The debate proceeds with an intuitive knowledge that constitutional guarantees are grounded in a sense of social justice which is derived from the interplay between the changing needs of the nation and evolving insights about equality and liberty.

The Constitution remains in the true sense, a living document, a dynamic source of interpretation for the nation's search for ways to promote the general welfare.

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NOTES

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2. Justice Cardozo's Opinion, as cited in "Constitutional Background to the Social Security Act of 1935," *Social Security Bulletin*, January 1987, Vol. 50, No. 1, p. 11.



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